

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE

JURY TRIAL - DAY ELEVEN

John J. Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, Massachusetts 02210
Thursday, January 29, 2015
11:10 a.m.

Marcia G. Patrisso, RMR, CRR
Cheryl Dahlstrom, RMR, CRR
Official Court Reporters
John J. Moakley U.S. Courthouse
One Courthouse Way, Room 3510
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On Behalf of the Defendant

PROCEDINGS

2 (The venire entered the room at 11:10 a.m.)

3 THE COURT: Good morning, everyone. Good morning,
4 ladies and gentlemen. Thank you for being here on such a
5 terrible travel morning. We appreciate the effort that you've
6 made to be here.

7 We're continuing with the process of selecting a jury
8 for the case of United States vs. Dzhokhar Tsarnaev. As you
9 know, Mr. Tsarnaev is charged in connection with the bombing
10 that occurred near the finish line of the Boston Marathon on
11 April 15, 2013, that resulted in the deaths of three people.
12 He's also charged with the death of an MIT police officer and
13 other offenses occurring on April 18 and 19, 2013.

14 Some, but not all, of the crimes charged are, by
15 statute, potentially punishable by death. You'll recall from
16 my prior instructions that the jury will first consider and
17 decide whether the government has proved Mr. Tsarnaev's guilt
18 of any or all of the charges against him. If he is convicted
19 of any of the capital crimes, that is, crimes potentially
20 punishable by death, the jury will then consider and decide
21 whether he will be sentenced to death for any such crime or to
22 life in prison without possibility of release.

23 Some of you may have wondered why the death penalty
24 could be a possibility in this case in view of the fact that
25 the laws of Massachusetts do not provide the death penalty for

1 murder or any other violation of Massachusetts law. The reason
2 is that this is a federal case involving alleged violations of
3 the laws of the United States rather than a state case
4 involving violations of the laws of Massachusetts.

5 If the jury convicts Mr. Tsarnaev of any of the
6 capital crimes charged in the Indictment, the same jury will
7 hear additional evidence after that verdict and decide on all
8 the evidence whether to sentence him to death or to life in
9 prison without the possibility of release. So because the jury
02:18 10 that is selected to first decide whether the defendant is
11 guilty or not will also decide his punishment if he is
12 convicted, it is necessary to question you about your beliefs
13 or feelings about the death penalty as part of the selection
14 process.

15 Let me briefly explain the procedures that must be
16 followed in any case in which the death penalty is or may be an
17 issue. As I said, as in any criminal trial, initially, the
18 government has the burden of proving that the defendant is, in
19 fact, guilty of any crime with which he is charged. If he is
02:19 20 convicted of a crime for which the death penalty may lawfully
21 be imposed, there will be a second phase of the trial. It's
22 sometimes referred in shorthand as the penalty phase.

23 In that phase, the government will introduce evidence
24 that seeks to prove beyond a reasonable doubt, first, that Mr.
25 Tsarnaev acted with sufficient intent to be subject to the

1 death penalty under the law; and, second, that aggravating
2 factors about the killings or about the defendant justify
3 sentencing him to death. Aggravating factors are circumstances
4 that, if proven, make the crimes particularly serious or
5 blameworthy and, therefore, under the law may justify imposing
6 a more severe sentence on this defendant compared with other
7 persons who are convicted of intentional killing or murder.
8 The government will bear the burden of proving alleged
9 aggravating factors to every juror beyond a reasonable doubt.

02:20 10 The defense will have an opportunity to present
11 evidence of what it will argue are mitigating factors in the
12 case. Mitigating factors are usually circumstances about the
13 crimes or the events or about the defendant's background or
14 character that would suggest that the death penalty is not the
15 appropriate sentence in the case or that life imprisonment
16 without the possibility of release is adequate as punishment
17 for the offenses.

18 Unlike the proof of aggravating factors, a mitigating
19 factor must be proved only by a greater weight of the evidence.
02:20 20 That is a less demanding standard of proof than proof beyond a
21 reasonable doubt. Again, unlike the proof of aggravating
22 factors, mitigating factors do not have to be proven to the
23 satisfaction of all 12 jurors. Any juror who finds or
24 determines that a mitigating factor has been proven by a
25 greater weight of the evidence may consider that factor in

1 deciding the appropriate sentence in the case regardless of
2 whether any or all of the other jurors agree that the
3 mitigating factor has been proven.

4 After the parties have made their presentations during
5 the penalty phase, the jury will weigh all the evidence.
6 Before a jury could vote to impose the death penalty, every
7 juror would have to be persuaded of certain threshold factors
8 that make the defendant potentially subject to the death
9 penalty. They would have to be persuaded those factors have
02:21 10 been proven beyond a reasonable doubt, as I said. In addition,
11 in order to impose the death penalty, every juror would have to
12 be persuaded that any proven aggravating factors sufficiently
13 outweigh any mitigating factors found by any juror or jurors so
14 that a sentence of death is justified.

15 Even if the jury does not find any mitigating factors,
16 it would still have to be unanimously persuaded that any proven
17 aggravating factors were sufficient to justify a death
18 sentence. You should understand that a jury is never required
19 to find that a sentence of death is justified.

02:22 20 A decision whether the government has proved that a
21 defendant should be sentenced to death must ultimately be made
22 by each juror, himself or herself. If, however, every juror is
23 persuaded that the death penalty should be imposed, I would be
24 required, as the trial judge, to sentence the defendant to
25 death. In other words, I could not change the jury's decision.

1 The jury, and not the judge, is responsible for determining
2 whether a defendant who is convicted of a capital crime will
3 live or die.

4 What I've just described is only an overview of the
5 law applicable to a jury's consideration of the death penalty.
6 If you are selected to serve on this jury and if you find the
7 defendant guilty of a crime or crimes punishable by death, I
8 will give you very detailed instructions concerning your duties
9 in deciding whether to impose the death penalty or life
02:23 10 imprisonment without possibility of release and the law that
11 must be followed in making that decision.

12 As I mentioned when you filled out your questionnaires
13 a while ago, there are no right or wrong answers to any of the
14 questions that you have been asked or that you will be asked
15 today. We're asking them because both the government and Mr.
16 Tsarnaev are entitled to a jury that does not have its mind
17 firmly made up one way or another before hearing the evidence
18 and a detailed explanation of the law. That applies both to
19 whether the defendant is guilty or not guilty of the specific
02:24 20 crimes charged in the Indictment and, if he is convicted of a
21 capital crime, whether he should be sentenced to death or to
22 life in prison without possibility of release.

23 So today I'm going to follow up on the questionnaires
24 by questioning each of you individually regarding issues that
25 may be pertinent to the process of selecting a jury. What

1 we're going to do is excuse you back to the room where you've
2 just been and ask you to come into the courtroom one by one to
3 ask those questions. There will be some people in addition to
4 the lawyers and their staffs present in the courtroom during
5 the process, and these proceedings will also be simultaneously
6 transmitted by video and audio to overflow courtrooms where
7 there are other people watching and listening.

8 We will not identify you by name but rather by a
9 number, and you will be seated so that the video camera will be
02:24 10 behind you. Your answers will generally be public, but if you
11 believe that a truthful answer would require you to reveal
12 sensitive personal information, we will temporarily stop the
13 audio feed to those courtrooms so that people observing there
14 will not be able to hear your answers.

15 Again, we do not expect or want any particular answer
16 to any questions. All we want and what the law expects is that
17 you provide accurate and truthful answers to the questions
18 you're asked. If you do that, you will be doing your duty as a
19 citizen and as a juror no matter what the answer may be.

02:25 20 Let me remind you about some of the prior
21 instructions. As I told you before and emphasize again, a
22 jury's verdict must be based on the evidence produced at trial
23 and must be free from outside influence. Therefore, I remind
24 you again it is extremely important that you do not discuss the
25 case, including the jury selection process, with your family,

1 friends, each other, or any other person until you've been
2 excused or, if selected as a juror, until the case concludes.

3 Again, of course, you're not to conduct any
4 independent research online or otherwise or to read, watch or
5 listen to reports about the case in the media that you are able
6 to avoid.

7 When you signed -- when you completed the
8 questionnaires, you signed after a statement that you were
9 making true answers to the questions in the questionnaire, you
02:26 10 made that affirmation under the pains and penalties of perjury.
11 You may recall that statement that preceded your signature.
12 Similarly, your answers here must be made under an oath or
13 affirmation that you will be answering truthfully, completely,
14 and to the best of your ability.

15 The clerk will now administer that oath to you so if
16 you'd all rise.

17 (Venire sworn.)

18 THE COURT: Okay, jurors. We'll ask you to withdraw
19 into the room, and we'll call you in one by one to continue the
02:27 20 process.

21 (The venire left the room at 11:20 a.m.)

22 THE COURT: All set? I guess we're on.

23 Good morning, everybody. We had a slow start for
24 obvious reasons, I'm afraid. Let's forge ahead.

25 THE CLERK: Juror No. 204.

1 THE JURY CLERK: Juror 204.

2 THE CLERK: Ma'am, over here, please, if you would.

3 | Have a seat.

4 THE COURT: Good morning.

5 THE JUROR: Good morning.

6 THE COURT: I appreciate your patience.

7 THE JUROR: You're welcome.

02:30 10 We're going to ask you some questions. That's the
11 questionnaire that you filled out. We'll ask you to follow
12 along with us on some of the questions.

13 Have you been able, since you were last here, to
14 follow my instructions and avoid my discussion of the case or
15 any exposure to media accounts?

16 THE JUROR: Yes.

17 THE COURT: We have a little personal family
18 information. I see you have a brother who's in the Army at
19 Fort Hood, Texas.

02:30 20 | THE JUROR: Yes.

21 THE COURT: How long has he been in the Army?

22 THE JUROR: Three years. He just signed on for
23 another three years, too.

24 | THE COURT: Does he have a specialty?

25 | THE JUROR: He is a sergeant. He doesn't talk a lot

1 about it with me. He's in the 238 Cav at West Fort Hood in
2 Texas. He's at Fort Hood.

3 THE COURT: Does he have any particular --

4 THE JUROR: I'm not --

5 THE COURT: -- assignment or anything that you're
6 familiar with?

7 THE JUROR: Not that I know of. He talks about it
8 with my mom but not to me.

9 THE COURT: That's what I was going to ask. Do you
02:31 10 text or tweet?

11 THE JUROR: If I talk to him, it's usually about,
12 like, movies and stuff. I don't really talk to him about what
13 he does.

14 THE COURT: Okay. And you're a medical secretary in a
15 medical office?

16 THE JUROR: Yes, a urology office.

17 THE COURT: We asked people about the use of social
18 media.

19 THE JUROR: I put -- sorry, a lot.

02:31 20 THE COURT: Yeah, you did. Just tell us what you use.

21 THE JUROR: Well, I have a friend in Brazil, so I use
22 Facebook just for communication.

23 THE COURT: A friend where?

24 THE JUROR: In Brazil, that I met at a concert. So I
25 use Facebook, Twitter, but I don't go on it a lot. I usually

1 just follow a comedian, I think I put, too, on Twitter. I just
2 have accounts. I don't -- Facebook, I sometimes go on but just
3 to post pictures. That's it.

4 THE COURT: And Twitter, you do -- you just follow
5 somebody?

6 THE JUROR: Yeah, a comedian. I follow a couple
7 people, but I only really follow the comedian.

8 THE COURT: Actually, I see now in 32, your brother
9 actually served in Afghanistan?

02:32 10 THE JUROR: Yes. I want to say it was a year or two
11 ago. He was in Afghanistan for -- I want to say six months to
12 a year.

13 THE COURT: You think he saw combat but aren't sure?

14 THE JUROR: I believe he did.

15 THE COURT: Okay.

16 THE JUROR: I know he -- I know he got an award for --
17 a bomb went off, and he went and helped people. He wasn't near
18 -- he was a football field away. That's just what I heard from
19 my mom. He doesn't talk to me about it. My mom knows way more
02:32 20 than I do about -- I don't like to talk to him about that stuff
21 because it makes me nervous, so I kind of just talk to him
22 about normal stuff.

23 THE COURT: It makes you nervous generally or it makes
24 you nervous because it's your brother?

25 THE JUROR: Because he's my brother.

1 THE COURT: He wasn't injured at all?

2 THE JUROR: No, he wasn't injured at all.

3 THE COURT: After that he was assigned as a
4 peacekeeper in Kosovo?

5 THE JUROR: Yes. He just got back in October, and now
6 he's back at Fort Hood. So he should be there for at least as
7 long as he was in Kosovo, which was a year.

8 THE COURT: Does he send you pictures or anything,
9 like, on Facebook or Instagram or anything?

02:33 10 THE JUROR: He has a Facebook account so sometimes I
11 see pictures of him. My mom looks at the 238 Cav Facebook
12 page, but I usually don't look at it. Sometimes I'll see
13 pictures that mom shows me of him, like, in his uniform. The
14 last picture I saw of him, he was at a ball for the military
15 and he --

16 THE COURT: Dress uniform?

17 THE JUROR: Yeah, dress uniform.

18 THE COURT: I'm looking at Page 19, Question 70. You
19 say you don't listen to radio much, but you rarely listen to
02:34 20 Kiss 108?

21 THE JUROR: Yeah. When there's a contest to win
22 concert tickets, I'll listen to the radio. Normally, I just
23 listen to my iPod. I don't like the radio.

24 THE COURT: There's a particular show, I'm told, on
25 Kiss 108, Matty in the Morning. Do you listen to that?

1 THE JUROR: I've heard it once or twice, but I --
2 usually, on the way to work, I listen to my iPod. The last
3 time I heard it was a couple months ago. I don't listen to the
4 radio in the morning.

5 THE COURT: Did you listen to it any time around the
6 time you filled out your questionnaire?

7 THE JUROR: No, I haven't since.

8 THE COURT: If you'd turn to Page 20, in Question 77,
9 we asked whether, based on things you'd seen or read in the
02:35 10 media or else-wise, you had formed any opinion about whether
11 the defendant is guilty or not and, if so, what punishment
12 might be appropriate. We provided some choices, yes, no, and
13 unsure. For each of those you checked "unsure." Would you
14 tell us about that, why you checked that?

15 THE JUROR: Yes. I don't watch the news a lot, so I
16 don't really form opinions about stuff that's on the news. The
17 only time I watch the news is if it's on when my parents -- in
18 the morning when I'm putting on my shoes. So I wasn't sure
19 either way because I honestly don't watch the news.

02:36 20 THE COURT: Did you watch news events around the time
21 of the events, the Boston Marathon itself; in other words, in
22 that week in April of 2013, were you tuned in?

23 THE JUROR: Not tuned in. I think I heard about it
24 when I was at work. I think I saw, like, a little bit on TV,
25 but I didn't see enough that I'd -- you know, once I see

1 something on the news, I usually don't really follow it.

2 THE COURT: Okay. Well, if you're a juror in the
3 case, what we'll ask you to do is follow the principles that
4 govern in criminal prosecution, and that is, that any person
5 who is accused of a crime is presumed to be innocent of the
6 crime unless and until the government proves that he is guilty
7 by the evidence at trial and proves it beyond a reasonable
8 doubt.

9 So to the extent that people might have any
02:36 10 impressions beforehand, we ask them to set those aside and to
11 pay attention solely to the evidence produced at trial and to
12 concentrate on that and then decide the issues in the case
13 based on an evaluations of that evidence.

14 Would you be able to fulfill that duty faithfully if
15 you were a juror?

16 THE JUROR: Yes, I believe so.

17 THE COURT: There's nothing in your impressions or
18 mind that would interfere with that?

19 THE JUROR: No.

02:37 20 THE COURT: I'm now on Page 23. Beginning with
21 Question 88, we asked a series of questions about attitudes
22 toward the death penalty in general and maybe more particularly
23 to this case. So in Question 88 we asked the general question,
24 if you have any views, what are they. And you said, "I believe
25 in the death penalty in certain circumstances, but it depends

1 on the crime and if guilty without doubt." Of course, we only
2 get to the question of whether there's a death penalty if
3 someone has already been convicted beyond a reasonable doubt of
4 a crime for which the death penalty is possible, right? You
5 understand that?

6 THE JUROR: Yes.

7 THE COURT: It's a given that the person has been
8 found guilty beyond a reasonable doubt in order to get to the
9 stage.

02:38 10 But when you said "depends on the crime," what were
11 you thinking of?

12 THE JUROR: I wasn't really sure when I was answering
13 it because I believe in the death penalty, but I don't, like,
14 have certain circumstances that I would be able to -- at that
15 time I -- I'm not sure there are certain -- sorry. It's really
16 bad.

17 THE COURT: Relax. Take a deep breath.

18 THE JUROR: Okay. So I think it all depends. I'm not
19 sure if there's like -- if I'm one way or the other kind of
02:38 20 thing. That's why I kind of --

21 THE COURT: Let me -- is it something you've thought a
22 lot about or thought not very much about over the years?

23 THE JUROR: Not very much about over the years. When
24 I was -- when I was younger maybe because my great aunt was
25 murdered, so when I was younger, but not since then.

1 THE COURT: Okay. In the next question, 89, we asked
2 you to put yourself on a scale from 1 to 10, 1 being strongly
3 opposed, 10 being strongly in favor. You selected 5.

4 THE JUROR: Yeah, in the middle because I wasn't
5 either way.

6 THE COURT: Okay. On the next page, Question 90, we
7 asked you to -- rather than picking a number, to select a
8 statement that you thought came closest to describing your
9 feelings about the death penalty where someone has been proven
02:39 10 guilty of murder. And you selected D.

11 THE JUROR: The -- just, like, the middle one, I
12 think, again.

13 THE COURT: It said you're not for or against it. You
14 could vote to impose it or you could vote for life imprisonment
15 without possibility of release, whichever you thought was
16 called for by the facts and the law in that case. Is that a
17 good summary of your --

18 THE JUROR: Yes.

19 THE COURT: And on Page 25, at the bottom, we asked,
02:40 20 if you found this defendant guilty and decided that the death
21 penalty was the appropriate punishment -- this is Question 95.

22 THE JUROR: Okay.

23 THE COURT: You found him guilty and you decided the
24 death penalty was the appropriate punishment, could you
25 conscientiously vote for the death penalty, and you put yes.

1 THE JUROR: Yeah. And I put yes for the second one,
2 too.

3 THE COURT: The other side of it was, if you thought
4 that life imprisonment was the -- without possibility of
5 release was the appropriate punishment, could you
6 conscientiously vote for that, you said yes to that as well.

7 THE JUROR: Yeah, because I was still on the unsure
8 part of it.

9 THE COURT: Does that represent your frame of mind as
02:40 10 to the death penalty?

11 THE JUROR: Yes, it does.

12 THE COURT: Follow-up?

13 MR. WEINREB: A few questions, your Honor. Good
14 morning.

15 THE JUROR: Morning.

16 MR. WEINREB: My name is Bill Weinreb. I'm one of the
17 prosecutors in the case. If you don't mind, I wanted to follow
18 up on a few of the things in your questionnaire.

19 THE JUROR: Sure.

02:41 20 MR. WEINREB: You said earlier that you tend not to
21 watch the news or follow it unless it happens to be on.

22 THE JUROR: Yeah.

23 MR. WEINREB: Do you actively avoid the news?

24 THE JUROR: I wouldn't say I -- well, I have a TV in
25 my room and it's a DVR, so everything I watch is usually

1 something that has been prerecorded. The only time the news is
2 on in the living room is if my dad is watching it in the
3 morning and I'm putting on shoes. But most of the time I'm in
4 my room or playing a game with my sister. So I don't actively
5 avoid it. I just don't tend to watch it. Sorry.

6 MR. WEINREB: I guess what I'm getting at is, is it
7 just that it really doesn't interest you compared to other
8 things you could be doing with your time, or is it that there
9 are things you don't want to see and you just as soon not see
02:42 10 them or --

11 THE JUROR: It probably doesn't interest me because I
12 just don't follow it.

13 MR. WEINREB: One of the reasons I ask is because
14 Question 87, that asks whether graphic photographs or videos
15 showing severe injuries and so on would affect your ability to
16 serve as a juror, and you wrote no.

17 Just to flesh that question out a little, the
18 government expects that the evidence in this case will include
19 graphic pictures and videos of people who have lost limbs and
02:42 20 been injured in other ways.

21 THE JUROR: Okay.

22 MR. WEINREB: I was -- just wanted to make sure that
23 that -- you wouldn't have trouble looking at that evidence and
24 considering it as part of the case?

25 THE JUROR: I don't believe so, no. I've watched --

1 not a lot of news things but movies and TV shows that have
2 been, and I haven't been -- it hasn't bothered me really.

3 MR. WEINREB: Turning back to your brother for a
4 minute, you said he served some time in Afghanistan. Is it
5 possible he will be sent back there or to Iraq or to that part
6 of the world?

7 THE JUROR: I don't know. It may be possible. Again,
8 I don't talk with him about what he does. I know he was --
9 yeah, he was in Kosovo for peacekeeping and now he's back, and
02:43 10 he signed on for another three years. But however long he was
11 in Kosovo, he can stay in the states. So I'm not sure, in the
12 future, if he would go back. So it's possible.

13 MR. WEINREB: Again, there may be some evidence in
14 this case -- you may hear evidence that one of the motives for
15 the crime was to punish America for the actions of its soldiers
16 in places like Afghanistan and Iraq.

17 THE JUROR: Okay. I didn't --

18 MR. WEINREB: No, you would have no reason to know
19 that.

02:44 20 THE JUROR: Okay.

21 MR. WEINREB: I'm just letting you know that because
22 we're trying to find out just ahead of time whether hearing any
23 certain evidence would create such a reaction in you that you
24 would no longer be able to be a fair and impartial juror. So
25 that's really the question, is, if you heard that kind of

1 evidence, would that interfere with your ability to be fair and
2 impartial, do you think?

3 THE JUROR: Sorry. I'm not sure just because -- I
4 don't think so just because I don't know what my -- I just know
5 he's in the Army. And I kind of don't think of what he does
6 when he's over places. I don't think so unless it was, like,
7 directly related to him maybe, like if I knew it was directly
8 him.

9 MR. WEINREB: And then one last thing. With respect
02:44 10 to the death penalty, you said that you could conscientiously
11 vote both to impose a sentence of death and a sentence of life
12 imprisonment depending on what the evidence showed.

13 THE JUROR: Yes.

14 MR. WEINREB: And I just want to ask you one question
15 about that, which is, if you were in a -- on a case like this
16 one, involving a crime that carried the death penalty and the
17 defendant was convicted of it, and you had to vote for the
18 death penalty or against the death penalty, you understand, of
19 course, that that wouldn't just be an abstract kind of
02:45 20 decision? That would be a real --

21 THE JUROR: Yeah.

22 MR. WEINREB: -- permanent decision. It would mean
23 that you would be sentencing somebody to death, and you could
24 never change that decision.

25 THE JUROR: Yes, yeah.

1 MR. WEINREB: Do you believe that in a real-life
2 situation you could actually do it, sentence someone to death?

3 THE JUROR: I am not sure. I believe I could with all
4 the evidence and everything. I'm not sure to that answer. I'm
5 sorry.

6 MR. WEINREB: Say more. Why aren't you sure? What's
7 the source of your doubts?

8 THE JUROR: Just -- well, I'm nervous right now. I
9 know it would be a hard decision, so that's why I'm unsure
02:46 10 right now because I know it's a really big decision.

11 MR. WEINREB: I think for anybody it would be a hard
12 decision.

13 THE JUROR: Yeah.

14 MR. WEINREB: So that's understandable. But let me
15 probe a little more because you say you're nervous now just
16 thinking about it. When the time comes, if the time comes,
17 you'll actually -- can you -- do you think you might be so
18 nervous or so anxious about it that it would prevent you from
19 being able to do it the way you think you ought to be able to?

02:47 20 MS. CLARKE: Your Honor, a juror never has to impose a
21 sentence of death, and it seems like that's what Mr. Weinreb is
22 trying to get this juror --

23 THE COURT: Why don't you rephrase to avoid that
24 suggestion.

25 MR. WEINREB: If you came to -- if it were a real-life

1 situation and the trial had ended and you'd heard all the
2 evidence, the defendant had been found guilty, and now there's
3 been a penalty phase and you've heard more evidence, and now
4 you're back deciding whether to sentence a defendant to life or
5 death, and you think the evidence justifies a sentence of
6 death, but you've actually got to do it, you've got to make --
7 you've got to -- could you do it, or do you think that, despite
8 feeling the evidence justified it, it would be so emotional a
9 thing, so big a thing, that you couldn't -- wouldn't be able to
02:47 10 do it?

11 MS. CLARKE: Same objection, your Honor.

12 THE COURT: No. Go ahead. You can answer that.

13 THE JUROR: If I was really -- like, I thought it was
14 justified, then I believe I could. If I really at the end
15 thought it was, then I could. But it could go either one. You
16 know, like -- I don't really know at this point.

17 MR. WEINREB: Nobody --

18 THE JUROR: Sorry.

19 MR. WEINREB: I'm not asking you to predict how you
02:48 20 would vote in any case, let alone this case, just whether you
21 could actually do it.

22 MS. CLARKE: I think she answered that.

23 THE COURT: I think it's been answered. Anything
24 else?

25 MR. WEINREB: No.

1 THE COURT: Miss Clarke.

2 MS. CLARKE: Good morning. I'm Judy Clarke. I'm one
3 of the lawyers for Mr. Tsarnaev. I'm glad you made it in with
4 the snow.

5 THE JUROR: Oh, yes. Thank you.

6 MS. CLARKE: It sounds like your mom might be a source
7 of information for you about your brother.

8 THE JUROR: Yes.

9 MS. CLARKE: Does she tell you all about his
02:48 10 activities overseas and his activities at Fort Hood?

11 THE JUROR: No. I know she knows more than I do. She
12 doesn't usually tell me a lot about my brother.

13 MS. CLARKE: Why is that?

14 THE JUROR: I don't ask, I think is probably the
15 answer to that. I don't dig into what's happening. I just
16 kind of will talk to him about other stuff. I don't like
17 thinking about it.

18 MS. CLARKE: You don't like thinking about it because
19 why?

02:49 20 THE JUROR: He's my little brother. I'm nervous for
21 him.

22 MS. CLARKE: Oh, okay.

23 THE JUROR: Right now he's in Texas. He's -- I just
24 get nervous about him just because he's my youngest brother --
25 younger brother.

1 MS. CLARKE: You mentioned several times today being
2 nervous, and I'm sure --

3 THE JUROR: No. Lots of people -- lots of people in
4 one room kind of makes me really anxious.

5 MS. CLARKE: It does a lot of folks. You mentioned in
6 your questionnaire that -- if I can ask you to look at Question
7 21.

8 THE JUROR: Question 21.

9 MS. CLARKE: On Page 8. I'm sorry. We've gotten used
02:50 10 to where all these questions are.

11 THE JUROR: Yes.

12 MS. CLARKE: Is there anything about the -- that
13 condition that would cause you a problem sitting as a juror in
14 the case?

15 THE JUROR: It's usually talking in front of a lot of
16 people. Like, at work, when I first started, I was, you know,
17 quiet. But even with the patients in the office, I usually am
18 more out -- once I get comfortable, then it goes away.

19 MS. CLARKE: Then it's okay.

02:50 20 THE JUROR: But right now it's really bad because so
21 many people. Sorry.

22 MS. CLARKE: Just wanted to make sure you felt at
23 ease.

24 THE JUROR: Yeah. It's usually the beginning of
25 stuff, and then usually, after, it goes down.

1 MS. CLARKE: And then you settle in?

2 THE JUROR: Yes.

3 MS. CLARKE: The judge asked you about how you got
4 your news about the Marathon bombing, and you mentioned that
5 you heard about it at work.

6 THE JUROR: Yes. One of the girls, on her phone,
7 heard about it. We have a TV in the patient waiting area.

8 MS. CLARKE: Okay.

9 THE JUROR: I didn't watch it, but I heard from her
02:51 10 about it.

11 MS. CLARKE: Did your mom talk to you about it? Did
12 you get any information that way?

13 THE JUROR: Not that I know of. I know, like, after I
14 had seen a little bit on TV, because it was on the shows that I
15 usually watch, but I don't -- I don't think we discussed it
16 that much, I mean, what happened but not to the -- just about
17 what happened. I don't -- see, I don't remember. I'm sorry.
18 We didn't talk about it a lot.

19 MS. CLARKE: Okay. So you don't have many details?

02:51 20 THE JUROR: No.

21 MS. CLARKE: Could I just have one second?

22 THE JUROR: Sure.

23 MS. CLARKE: Did your parents say anything about you
24 being summonsed to come down to be on the jury?

25 THE JUROR: No. It was just that -- they knew I was

1 really nervous about going down by myself, so it was mostly
2 about nerves. And then I have a state one, too, so I thought
3 it was weird that I was getting two of them.

4 MS. CLARKE: You've gotten summonsed twice?

5 THE JUROR: Yeah, because I moved the state one last
6 year to this April because I was nervous. So, of course, then
7 I get another one. So it was, like, of course, only me would
8 get two.

9 MS. CLARKE: You're on a roll?

02:52 10 THE JUROR: Yes.

11 MS. CLARKE: Okay. Could I have just one second?

12 THE JUROR: Sure.

13 MS. CLARKE: Thank you very much.

14 THE COURT: Thank you. Just leave the questionnaire
15 there. Thanks.

16 THE CLERK: Juror No. 205.

17 THE JURY CLERK: Juror 205.

18 THE CLERK: Sir, over here, please, if you would.

19 Please have a seat.

02:53 20 THE COURT: Good morning.

21 THE JUROR: Good morning.

22 THE COURT: Thank you for being here on a tough travel
23 day.

24 That's the questionnaire that you filled out. We're
25 going to follow up on some of the questions, so you may refer

1 to it as we do.

2 First of all, let me just ask if you've been able
3 since your last time here to follow my instructions to avoid
4 discussing the subject matter of the case and to avoid any
5 avoidable media accounts of anything that's going on.

6 THE JUROR: Yes.

7 THE COURT: Tell us about your work life.

8 THE JUROR: Well, I'm an engineer. I work here in
9 Cambridge, actually. And I design computer control systems and
02:54 10 navigation systems, and I've been doing that kind of work for
11 over 30 years.

12 THE COURT: With the same company?

13 THE JUROR: I've been with the company I'm with now --
14 should I give you the name of the company?

15 THE COURT: It's up to you. We know what it is
16 because it's in your question --

17 THE JUROR: Draper Labs. I've been there for 25
18 years. I've worked for a couple other aerospace companies
19 before that so --

02:54 20 THE COURT: Okay. I guess we asked you whether you'd
21 written -- whether you're a published or unpublished author.
22 You've written a number of technical papers.

23 THE JUROR: That's correct.

24 THE COURT: Otherwise, no publications?

25 THE JUROR: No.

1 THE COURT: Social media, you use Facebook a little
2 bit for social --

3 THE JUROR: Yeah. I use it to be able to look at my
4 niece's children's pictures and things like that, but I
5 actually don't post anything on any kind of social media. In
6 fact, I'm sort of suggested that I don't do that for the kind
7 of work that I do.

8 THE COURT: Okay. So let me ask you to turn to Page
9 20. In Question 77, we asked people to tell us whether they
02:56 10 thought they had formed an opinion based on things that they'd
11 seen in the news or otherwise seen or heard about whether the
12 defendant was guilty or not, and if so, what penalty might be
13 imposed and, if they had formed an opinion, whether they
14 thought they would be able to put that aside if they were
15 called to be a juror and judge the questions presented on the
16 evidence in the case and not on pretrial information.

17 So you indicated that you had formed an opinion about
18 guilt and were unsure about the penalty, but you thought you
19 would be able to set aside any preconceived opinions and decide
02:56 20 the case based on the evidence.

21 THE JUROR: Yes. I think I could do that, yes.

22 THE COURT: You understand -- you've served as a juror
23 before, but I think it was in a civil case, correct?

24 THE JUROR: Correct. It was a medical malpractice.

25 THE COURT: You haven't had experience as a juror in a

1 criminal prosecution?

2 THE JUROR: No.

3 THE COURT: You understand, I presume, that in a
4 criminal prosecution anybody accused of a crime is presumed to
5 be innocent unless the government proves that the person is
6 guilty of what's charged by the evidence at the trial and
7 proves that proposition beyond a reasonable doubt. So the
8 burden is always with the government to prove guilt. A
9 defendant never has any burden or responsibility to prove that
02:57 10 he's not guilty. It's not a question of which side has
11 persuaded me. It's has the government persuaded me that this
12 person is guilty.

13 Do you understand that those are the principles that
14 we apply in our criminal justice system?

15 THE JUROR: Yes.

16 THE COURT: Would you be in the frame of mind to
17 faithfully and properly apply those principles if you were a
18 juror in this case?

19 THE JUROR: Yes.

02:57 20 THE COURT: You did note in Question 78, if you take a
21 peek, that based on news reports you'd seen, you said it was
22 hard to imagine that he was completely innocent.

23 THE JUROR: Yes. I've been watching all the news, and
24 there was plenty of coverage. There were certainly some facts
25 that seemed to be revealed that were pretty compelling.

1 THE COURT: Could you -- but you're telling us now
2 that you think you could compartmentalize that somehow or put
3 it away that you wouldn't --

4 THE JUROR: I think as well as anyone unless, you
5 know, you had not had any exposure to this case at all. I
6 don't think there are very many people that are in that
7 situation so --

8 THE COURT: Page 21, we asked a couple of questions
9 about whether you were perhaps personally affected by events.
02:58 10 You said you knew some people at work who were asked to shelter
11 in place, but they weren't close friends. Earlier you
12 indicated you work in Cambridge. Were you asked to -- were you
13 there on that day when --

14 THE JUROR: No, I was home. I live in Middleboro,
15 Massachusetts, 50 miles away, and I -- let's see. The shelter
16 in place was the next -- was a Friday.

17 THE COURT: Friday, right.

18 THE JUROR: No. I was at work on the day of the
19 Marathon. I came home early just to avoid some of the traffic
02:59 20 situations and so on.

21 THE COURT: Before the --

22 THE JUROR: No, no. It was -- it was after. I knew
23 that something had happened. I didn't really know much about
24 it, but it was clear that there were going to be some problems
25 with -- I take the subway and the train and so on. And we were

1 advised that that would possibly be disrupted, and a couple of
2 the stations on the red line were closed. I went home. And
3 then on the Friday with the shelter-in-place situation, I heard
4 that on the news and never went in to work that day.

5 THE COURT: So, in other words, you -- having heard it
6 on the news, you decided not to go in?

7 THE JUROR: I stayed home.

8 THE COURT: I see.

9 THE JUROR: I believe the MBTA was closed.

02:59 10 THE COURT: With respect to the 15th, Patriots' Day
11 itself, you went home early?

12 THE JUROR: Yup, yup.

13 THE COURT: Because you heard of the event? In other
14 words, you went home earlier than you would have because the
15 events occurred?

16 THE JUROR: Yeah, not significantly, but I think I
17 took an hour early train that I normally take. I was concerned
18 about traffic problems and T interruptions and so on.

19 THE COURT: So at Page 23, we asked a series of
03:00 20 questions about attitudes toward the death penalty, beginning
21 with Question 88. And that question asked about general views.
22 And you said you had no strong feelings either way. Does that
23 accurately --

24 THE JUROR: That is accurate.

25 THE COURT: In the next question we asked you to put

1 yourself on a scale from 1 to 10, 1 being strongly opposed to
2 the death penalty, 10 being strongly in favor. You selected 6.
3 Can you tell us why that was the right number for you?

4 THE JUROR: Well, you know, I guess 5 would be right
5 in the middle, right? And that would be completely neutral on
6 it. So I'm just showing just a slight favoritism toward having
7 the death penalty. But I do not have strong feelings about
8 this. I guess I would say that there certainly has been a
9 national debate on the subject of the death penalty and
03:01 10 certainly there are a lot of people feel strongly that there
11 shouldn't be one and there are other people that feel that
12 there should be. And I have not formed a strong opinion one
13 way or the other on the subject.

14 And I think I wrote in another part of the
15 questionnaire that in some ways I think, you know, life in
16 prison may be a more serious punishment than the death penalty.
17 It certainly would give an individual a very long period of
18 time to contemplate things and see the missed opportunities in
19 their life so --

03:02 20 THE COURT: Okay.

21 THE JUROR: Those are my thoughts.

22 THE COURT: I think the question you are referring to
23 is on Page 25. It's Question 93. You may want to just --

24 THE JUROR: 25?

25 THE COURT: Page 25, Question 93.

1 THE JUROR: Okay.

2 THE COURT: Just want you to review your answer there.

3 THE JUROR: Right. Okay.

4 THE COURT: Beyond what you've already said, anything
5 else you want to add to that answer?

6 THE JUROR: I think that covers my thoughts on it.

7 THE COURT: Let's go back a page, to 24. And Question
8 90, here, unlike 89 where we asked a numerical scale, we asked
9 you to indicate which statement of a series of proposed
03:03 10 statements best described your feelings about the death penalty
11 in a case where someone had been convicted of murder. You
12 selected D. It says, "I'm not for or against the death
13 penalty. I could vote to impose it or I could vote to impose a
14 sentence of life imprisonment without possibility of release,
15 whichever I believed was called for by the facts and the law in
16 the case." Is that an accurate summary of your view?

17 THE JUROR: That is accurate, yes.

18 THE COURT: Then again to 25 and the bottom of the
19 page, Question 95, getting a little more particular, we asked
03:03 20 whether, if you found this defendant guilty and you considered
21 the death penalty was an appropriate punishment, could you
22 conscientiously vote for the death penalty? And you wrote
23 "yes," or you checked the box "yes."

24 THE JUROR: Right.

25 THE COURT: The next question, on the next page, we

1 asked the reciprocal question basically. If you found the
2 defendant guilty and you decided life imprisonment without the
3 possibility of release was the appropriate punishment for him,
4 could you conscientiously vote for that penalty?

5 THE JUROR: Yes, I could.

6 THE COURT: You said yes there, too, as well.

7 Finally, just because you have it here and we're
8 looking at it, Question 98, you indicated you have in the past
9 run the Boston Marathon once.

03:04 10 THE JUROR: Yup.

11 THE COURT: But it's been awhile. Do you have any
12 particular feelings about the Marathon, affinity or anything,
13 that would interfere with your ability to be an impartial juror
14 in this particular case?

15 THE JUROR: I don't think so, no. I mean, I ran the
16 race, and I think it's a great race, but it's not -- wouldn't
17 influence any thinking on this case in any way. I just -- I
18 only mentioned it because I think that it gives me maybe a
19 little bit more insight into what some of the runners were
03:05 20 faced with and so on at the time if that's at all relevant in
21 this case. I don't know that it is, but I experienced the
22 race.

23 THE COURT: Okay.

24 MR. WEINREB: Good morning.

25 THE JUROR: Good morning.

1 MR. WEINREB: My name is Bill Weinreb. I'm one of the
2 prosecutors in the case. I just wanted to follow up on one of
3 your answers if I could.

4 THE JUROR: Okay.

5 MR. WEINREB: So one of the obligations of a juror
6 when you step into a jury box in a criminal trial is to presume
7 that the defendant is innocent.

8 THE JUROR: Yes.

9 MR. WEINREB: And to acquit him, to find him not
03:05 10 guilty, unless and until the government proves that he's guilty
11 beyond a reasonable doubt.

12 THE JUROR: Yes.

13 MR. WEINREB: Can you apply those principles?

14 THE JUROR: Yes, of course.

15 MR. WEINREB: You understand that that means that, if
16 the government doesn't offer enough evidence to prove him
17 guilty beyond a reasonable doubt, you can't fill in what you
18 heard in the courtroom with stuff you may have heard outside
19 the courtroom?

03:05 20 THE JUROR: I do understand that.

21 MR. WEINREB: Do you understand that?

22 THE JUROR: Yes.

23 MR. WEINREB: The case has to be decided just on the
24 evidence produced in court. Are you able to do that?

25 THE JUROR: Yes. I remember from the other trial that

1 I participated in, this medical malpractice, I believe the
2 judge described it as a brick by brick establishing the case.
3 And that's what I would expect that you would have to do in
4 this case, lay out all the evidence in a very convincing
5 fashion, and that would be the way the case is decided.

6 MR. WEINREB: Okay. And no bricks can come from
7 outside the courthouse.

8 THE JUROR: No.

9 MR. WEINREB: From what you've heard in the news or
03:06 10 anything like that, you understand that?

11 THE JUROR: Right. Right.

12 MR. WEINREB: You understand the defense has no
13 obligation to put on any evidence or to do anything? It's
14 totally on the prosecution to prove to you that he's guilty.

15 THE JUROR: I do understand that.

16 MR. WEINREB: Thank you.

17 THE COURT: Mr. Bruck.

18 MR. BRUCK: Good afternoon.

19 THE JUROR: It is afternoon.

03:06 20 THE COURT: It's changed while you've been here.

21 MR. BRUCK: By one minute. Time flies when you're
22 having fun.

23 I'm David Bruck. I'm one of Jahar Tsarnaev's
24 attorneys. I don't have a great deal to ask you, but I want to
25 follow up on a few things you were asked about.

1 You checked the little box that said you're a
2 supervisor or you have supervisory --

3 THE JUROR: Yeah. We change projects all the time. I
4 worked various projects where I was responsible for running the
5 project and assign people tasks and so on and monitor their
6 progress.

7 MR. BRUCK: Of course, in a jury, you have 12 equal
8 people even though some are much more educated and much more
9 used to leadership than others. I think maybe you can see
03:07 10 where my question is going. Do you think you could respect the
11 ability of everybody else to have their say?

12 THE JUROR: I would say, in my role as an engineering
13 supervisor, it's more a collaboration than a directing people,
14 fortunately or unfortunately, depending on how you want to look
15 at it. I find you have to build consensus to do things. It
16 isn't just a matter of asking people to do things your way and
17 they do it. So I understand the jury would have to reach a
18 consensus by some sort of a process of deliberation where
19 everyone's opinion is considered.

03:08 20 MR. BRUCK: And at the penalty phase, do you -- have
21 you pieced together from -- you haven't had full instructions,
22 but the judge has outlined how the system goes. In the end, no
23 one is ever required to vote for the death penalty. The vote
24 has to be unanimous if it's going to be imposed. But so long
25 as the basic requirements have been met to consider the death

1 penalty, it becomes a judgment of each individual juror. In
2 that sense, it's not really consensus. Each juror has to make
3 their own decision. Could you do that?

4 THE JUROR: It's a unanimous decision that's required.

5 MR. BRUCK: It would need to be unanimous to impose
6 the death penalty.

7 THE JUROR: Yup.

8 MR. BRUCK: And I guess that's really where I was
9 going with the question. Could you both do that yourself and
03:09 10 respect the --

11 MR. WEINREB: I object, your Honor. Part of what
12 happens in the jury box is jurors try to convince one another
13 of an outcome. That's an appropriate thing to have happen.

14 THE COURT: Right. Why don't you start again. Let's
15 back up.

16 MR. BRUCK: Okay. I guess, in the penalty phase of a
17 capital case, so long as some basic facts have been established
18 that allow the jury to consider the death penalty, then each
19 juror has to make their own decision. It really -- it involves
03:09 20 not only facts but also rights -- a sense of right and wrong
21 and what's fair, which might well vary from one juror to the
22 next. I guess my question is whether you would -- could make
23 that moral judgment for yourself?

24 THE JUROR: Well, I certainly guess everything about
25 this has been -- I can only express my decision, my opinion,

1 and I can certainly talk with other people and try to persuade
2 them that if they think that -- differently, but I -- I
3 certainly -- it doesn't sound like I have any choice in the
4 matter but to accept the fact that it requires a unanimous
5 decision, and that's the way it is. I can live with that.

6 MR. BRUCK: Okay. Staying with the death penalty for
7 a minute, you may have noticed -- I don't want to hurt
8 anybody's feelings here, but some of these questions are not
9 very precise on the questionnaire. And I want to look at one
03:10 10 of the important ones. Question 77.

11 THE COURT: It's on Page 20.

12 MR. BRUCK: On Page 20, asked whether you had formed
13 an opinion, and you checked the box for "yes," guilty and not
14 guilty, "no"; and then C, you checked "unsure" and then
15 "unsure" for D. When you checked "unsure" about the sentence,
16 did you mean to say that you were unsure whether you had an
17 opinion or unsure whether he should receive the death penalty?
18 You see the distinction?

19 THE JUROR: No.

03:11 20 MR. BRUCK: Well, the question was: Have you formed
21 an opinion that he should receive the death penalty? Yes, no,
22 unsure.

23 THE JUROR: I have not formed an opinion on whether he
24 should receive the death penalty.

25 MR. BRUCK: Okay. So you're not really unsure that --

1 whether you'd formed an opinion. You had not formed an
2 opinion. You see what I mean? The problem is in the question
3 and the way -- but I just want to make sure we're on the same
4 page.

5 THE JUROR: Okay. Still not sure that I'm on the same
6 page with you.

7 MR. BRUCK: Well, I think you've answered what I was
8 looking for.

9 Have you thought about that question?

03:12 10 THE JUROR: Well, first of all, like I said, we have
11 to establish guilt in this, and then we have to go through the
12 process of determining the appropriate sentence. And I think
13 I've stated before that I do not have a strong opinion about
14 whether the death penalty is the -- is a reasonable thing to do
15 or not, and I don't -- I think it could be imposed, but I have
16 not spent enough time really soul-searching on the topic to
17 have come to a strong conclusion about how I feel about the
18 topic in general. And in this case, I have no thoughts about
19 it at all. I think that would be premature at this point to
03:13 20 try to figure out the sentencing.

21 MR. BRUCK: Okay. Do you see why I'm asking? Some
22 people talk about it in the community, think about it, come
23 down one way or the other even though they don't know for sure,
24 but they know where they stand now. I'm just wondering,
25 understanding that you haven't reached a final decision --

1 MR. WEINREB: Your Honor, I object. That was really
2 thoroughly asked and answered already.

3 THE COURT: I think it has been. I agree with that.

4 MR. BRUCK: You mentioned your wife a couple points in
5 the questionnaire. Has she talked to you about the --
6 expressed any opinion?

7 THE JUROR: I don't think we have talked about my wife
8 yet, but the -- she hasn't expressed a strong opinion about it.
9 Obviously, she knows that I'm here today and what this is
03:13 10 about. She hasn't done anything to try to influence me in any
11 way or say, Yeah, yeah, you've got to do this or you've got to
12 do that. It's -- you know, she's neutral on it, I think.

13 MR. BRUCK: Do you mind if I ask you whether she has
14 said how she feels without trying to influence you but just
15 saying where she stands?

16 MR. WEINREB: I object.

17 THE COURT: Yeah. I think we'll limit it to the
18 juror.

19 MR. BRUCK: Has anybody expressed their opinion to you
03:14 20 about either guilt or innocence or what punishment should be
21 inflicted that you can recall?

22 MR. WEINREB: I object. It's not a follow-up
23 question.

24 THE COURT: I think so. I agree.

25 MR. BRUCK: Okay. You see why I'm asking you these

1 questions?

2 MR. WEINREB: Objection. That's not a follow-up
3 question.

4 THE COURT: It doesn't matter whether he does.

5 MR. BRUCK: I guess my last question is just: Do you
6 think there's anything -- this is our last chance, Judge
7 O'Toole's last chance, to know what's inside. And you're the
8 only one who knows.

9 THE JUROR: Okay.

03:15 10 MR. BRUCK: Is there anything else that the judge
11 ought to know, that we ought to know, about your feelings about
12 this case?

13 THE JUROR: I feel like I've sort of stated my
14 position on this pretty clearly, and I'm not -- there's nothing
15 else that I can think of that I could say that would add to
16 that.

17 MR. BRUCK: Very good. Thank you so much.

18 THE COURT: Okay. Thanks. Just leave the
19 questionnaire there.

03:15 20 THE CLERK: Juror No. 208.

21 THE JURY CLERK: Juror 208.

22 THE CLERK: Sir, over here, please. Have a seat if
23 you would.

24 THE COURT: Good afternoon.

25 THE JUROR: How you doing?

1 THE COURT: Thanks for being here on a tough day.

2 Since you were here last, have you been able to follow
3 my instructions to avoid any discussion of the substance of the
4 case?

5 THE JUROR: Tried my best, yeah.

6 THE COURT: Avoid any avoidable news accounts or
7 media?

8 THE JUROR: Yeah, definitely.

9 THE COURT: So we have -- that's the questionnaire
03:17 10 that you filled out. We're going to follow up on some of the
11 questions. I want to start actually on Page 4, Question 6.
12 You were born and raised in People's Republic of China. We
13 asked for your citizenship and you said "PRC." Are you a U.S.
14 citizen?

15 THE JUROR: I might have answered that wrong. But,
16 yes, my parents were naturalized when I was under 18.

17 THE COURT: So you have derived citizenship through
18 your parents.

19 THE JUROR: I was sworn in at Faneuil Hall.

03:17 20 THE COURT: When was that, do you know?

21 THE JUROR: Fourth grade so --

22 THE COURT: That gives me an idea, awhile ago. So
23 that was an error when you put citizenship PRC?

24 THE JUROR: Yeah, sorry about that.

25 THE COURT: Wanted to clear that up.

1 Can I ask you, on Page 7, your father is a physician.

2 THE JUROR: Correct.

3 THE COURT: Where does he practice?

4 THE JUROR: Mass. General.

5 THE COURT: How long has he been there?

6 THE JUROR: He's been there since early 2000, since
7 his residency.

8 THE COURT: Okay. Was he -- some of the people
9 injured in the Marathon bombing were treated at Mass. General
03:18 10 after the event. Was he involved in that at all?

11 THE JUROR: Not to my knowledge, he was not.

12 THE COURT: Do you know whether he was on duty that
13 that day or at the hospital?

14 THE JUROR: He was working definitely, but I'm not
15 sure if he worked on any of the critical cases that came in
16 that day.

17 THE COURT: Has he talked to you about that day, what
18 it was like at the hospital?

19 THE JUROR: No. I think he has cases that are
03:18 20 ordinarily scheduled, and he did what he had to do that day.

21 THE COURT: Where is his sort of office practice? Is
22 it part of the complex there?

23 THE JUROR: His clinic or --

24 THE COURT: Yeah, where he would see patients on a --

25 THE JUROR: 55 Fruit Street, the main campus of Mass.

1 General.

2 THE COURT: One of the main buildings?

3 THE JUROR: Yeah, exactly.

4 THE COURT: Tell us a little about -- when you were an
5 undergraduate, you took a course in Modern Trends in Islam?

6 THE JUROR: Oh, yeah.

7 THE COURT: Tell us a little bit about that.

8 THE JUROR: I went to Union College, which is a pretty
9 typical northeastern liberal arts school, and I felt that, you
03:19 10 know, religious studies was a good way to get -- was a good
11 interdisciplinary, pretty solid liberal arts thing, a little
12 bit of English, philosophy, history, and all that. So my
13 thesis was on Modern Trends in Islam. Hit on some, like, stuff
14 that -- big topics, Islamaphobia in the U.S., Islamic finance.
15 I also had an econ minor. It was pretty interesting to go
16 through that exercise.

17 THE COURT: Since then have you continued an interest
18 in Islam?

19 THE JUROR: Nothing more than like a cursory article
03:20 20 here or then but --

21 THE COURT: For example?

22 THE JUROR: Like, the news, not like -- for free
23 reading, I don't really delve into, like, textbooks.

24 THE COURT: Did you study Islamic jurisprudence at
25 all?

1 THE JUROR: A little bit, yeah, sharia law. Most of
2 it was on Islamic finance, how they have profit-sharing
3 agreements, all that, instead of charging interest.

4 THE COURT: Tell us about your day-to-day work.

5 THE JUROR: I'm actually transitioning. I work at
6 State Street Corporation, and I'm moving into a role in risk.
7 So I'm actually off for two weeks right now.

8 THE COURT: What does the transition mean for you in
9 terms of --

03:21 10 THE JUROR: I'm just hanging out, studying as much as
11 I can about my new role.

12 THE COURT: No. I mean, how much will your day-to-day
13 change? Different subject matter, is that all?

14 THE JUROR: Yeah, exactly, same company, different
15 group.

16 THE COURT: Same place? Different building?

17 THE JUROR: Different building. I'll at One Lincoln,
18 Street, the flagship building.

19 THE COURT: If you were a juror on this case, would
03:21 20 that interfere with your transition?

21 THE JUROR: No. Might make my manager unhappy, but
22 other than that, I think we're fine.

23 THE COURT: We ask -- this is on Page 11, top of the
24 page, 30, about your social media use. Can you tell us a
25 little bit? I take it that's Facebook and Instagram?

1 THE JUROR: Yeah. Nothing more than just a cursory,
2 like, scan through the news feed, wishing a friend happy
3 birthday, maybe a strong acquaintance a happy birthday. But I
4 don't, like, run my own blog or anything or post long statuses
5 every day. A pretty casual user, I'd say.

6 THE COURT: So let me ask you to turn to Page 20. I
7 want to look at Question 77.

8 THE JUROR: Of course.

9 THE COURT: In this question we asked whether you had
03:23 10 as a -- because of something you'd seen or read in the
11 newspaper or otherwise learned, whether you'd formed an opinion
12 about whether the defendant was guilty or not.

13 THE JUROR: Uh-huh.

14 THE COURT: And also whether you had an opinion about
15 whether he should or should not receive the death penalty. And
16 you -- we gave you the choice, yes, no or unsure.

17 THE JUROR: Sorry. That was pretty --

18 THE COURT: Then we asked further that, if you
19 answered yes to any of the questions, would you be able or
03:23 20 unable to set aside your opinion and base your decision about
21 those matters based only on the evidence that might be
22 presented in court. So you did indicate, I guess, yes, that
23 you had an opinion about whether he was guilty.

24 THE JUROR: Yeah.

25 THE COURT: It appears from the cross-out on the form

1 that you originally picked "unsure" and then you changed it to
2 "yes."

3 THE JUROR: Yeah.

4 THE COURT: As to all the other questions there you
5 answered "no."

6 THE JUROR: Uh-huh.

7 THE COURT: Then down below, as I said, you checked
8 the box saying "able." You thought you would be able to put
9 aside any opinion you had formed and decide the case on the
03:24 10 evidence at trial.

11 THE JUROR: Uh-huh.

12 THE COURT: So in a criminal prosecution, every person
13 accused of a crime is presumed to be innocent or not guilty.

14 THE JUROR: Sure.

15 THE COURT: Unless and until the government proves
16 that he's guilty beyond a reasonable doubt.

17 THE JUROR: Of course.

18 THE COURT: By the evidence at trial. You say "of
19 course" because you've heard this before, is that right?

03:24 20 THE JUROR: Perhaps, yeah.

21 THE COURT: It's obviously a common principle because
22 it's one of the fundamental ones of our system.

23 THE JUROR: Absolutely.

24 THE COURT: A defendant who is accused of a crime
25 never has any obligation or duty or responsibility to prove

1 that he's not guilty.

2 THE JUROR: Uh-huh.

3 THE COURT: The question isn't: Who is convincing me
4 here? The question is: Has the government convinced me by the
5 evidence at trial that he's guilty?

6 THE JUROR: Yeah.

7 THE COURT: To the extent you have any opinion, would
8 that opinion interfere with your ability to perform according
9 to those principles, or would you be able to compartmentalize
03:25 10 the opinion and set it aside and focus only on the evidence at
11 trial and make a decision based on that?

12 THE JUROR: I'm not completely sure. Yeah, sorry. My
13 answers are all kind of all over the place on that. I think,
14 in terms of the death penalty, my only reservation would be if
15 it was, like, a wrongful conviction, you can't take that back
16 once you've given that penalty. But, personally, I believe
17 this case is no question for me.

18 THE COURT: So even if the evidence at trial were not
19 convincing, you would remain convinced by what you heard before
03:25 20 the trial?

21 THE JUROR: Potentially, yeah. I'd say a strong
22 maybe.

23 THE COURT: Let me just ask specifically about the
24 death penalty because we did ask some particular questions
25 about that.

1 MR. WEINREB: Your Honor, if we could interrupt at
2 some point.

3 THE COURT: Okay. I think I just want to run through
4 these.

5 MR. WEINREB: Okay.

6 THE COURT: We will be -- I'm looking at Page 23. We
7 asked for some general views, your general views about the
8 death penalty.

9 THE JUROR: Yeah.

03:26 10 THE COURT: In Question 88, you said you didn't have
11 any really, I guess.

12 THE JUROR: Yeah.

13 THE COURT: 89, you put yourself somewhere in the
14 middle as to being opposed or in favor.

15 THE JUROR: Yeah.

16 THE COURT: Is that accurate?

17 THE JUROR: I'd say that definitely -- in terms of the
18 death penalty, definitely case-by-case basis. But in something
19 as heinous as this incident, I think I would be more towards
03:26 20 the 10 side of the scale.

21 THE COURT: Okay. Any others, other questions?

22 MR. WEINREB: No.

23 MS. CLARKE: Thank you.

24 THE COURT: Thank you, sir.

25 THE JUROR: All right. Have a great day, guys.

1 THE CLERK: Juror No. 211.

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 THE CLERK: Juror No. 211.

03:28 10 THE JURY CLERK: Juror 211.

11 THE CLERK: Right up here, ma'am. Have a seat if you
12 would.

13 THE COURT: Good morning. No, I'm too late. Good
14 afternoon.

15 THE JUROR: Good afternoon.

16 THE COURT: Thank you for being here.

17 THE JUROR: You're welcome.

18 THE COURT: Have you been able to follow my
19 instructions from the last time to avoid any discussion of this
03:28 20 case or process with anybody?

21 THE JUROR: Yes.

22 THE COURT: As much as you could, to avoid any media
23 accounts of the process?

24 THE JUROR: Yes.

25 THE COURT: Of the case?

1 Tell me about your employment.

2 THE JUROR: I work for the City of Lynn School
3 Department. I am work in the Special Ed Department.

4 THE COURT: Okay. As a teacher's aide?

5 THE JUROR: I'm paraprofessional. I'm getting my
6 teacher's license so -- I already passed all the tests so --

7 THE COURT: Okay. And you have some use of social
8 media, Facebook, but mostly --

9 THE JUROR: A little bit. I just play video games,
03:29 10 and, you know, I talk to relatives that live out of the
11 country.

12 THE COURT: Where do they live?

13 THE JUROR: Ireland, Australia, Germany.

14 THE COURT: Could we cut the audio?

15 (SIDEBAR CONFERENCE AS FOLLOWS:

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

03:30 20 [REDACTED]

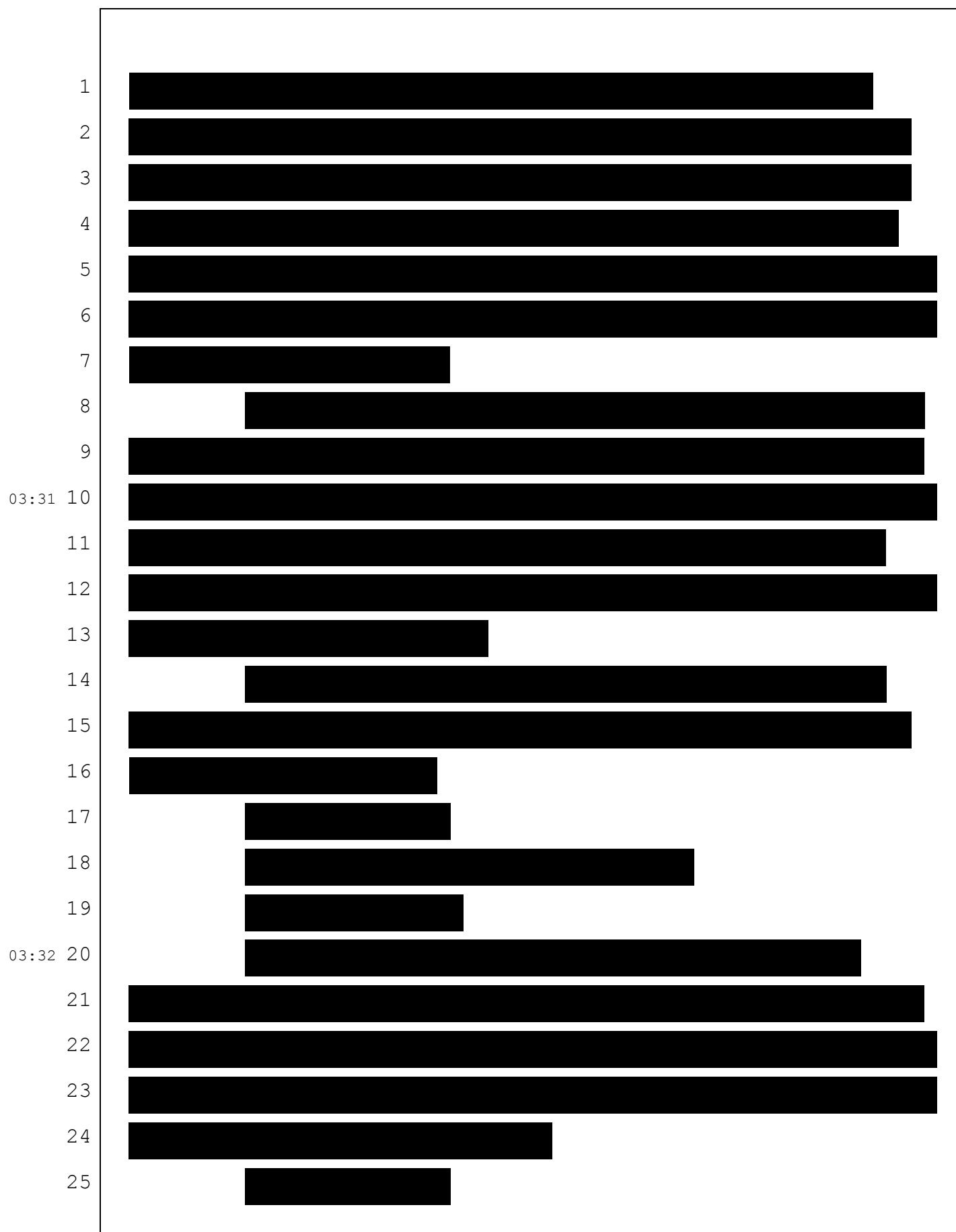
21 [REDACTED]

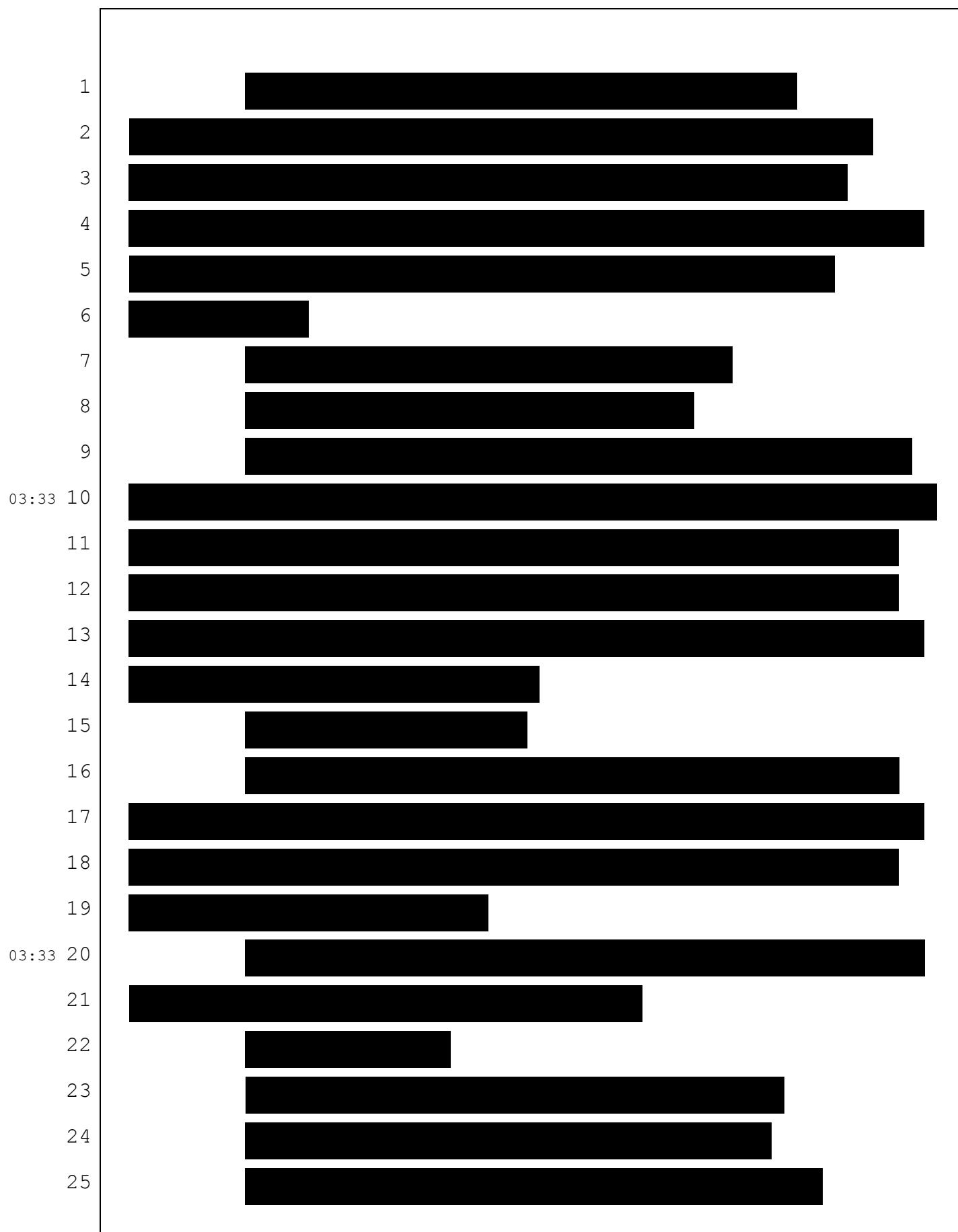
22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]





1

2

3

4 THE COURT: Okay. All right. We can go back on.

5 . . . END OF SIDEBAR CONFERENCE.)

6 THE COURT: If you'd turn to Page 20, Question 77, up
7 near the top, we asked whether, as a result of things you'd
8 seen or read or learned from any source, had you formed an
9 opinion about whether the defendant was guilty or not and
03:34 10 whether he should receive the death penalty or not. Of the
11 available boxes, you checked in each case "unsure." Can you
12 tell us a little bit about that answer? Why did you select
13 "unsure" about the three options?

14 THE JUROR: I really -- I mean, I knew about the case,
15 but I haven't really been following it. I'm just unsure about
16 the death penalty.

17 THE COURT: Okay. Let's take the first part, (a) and
18 (b) first, where you say you're unsure about that as well.

19 THE JUROR: I just -- I -- I mean, I've seen it on TV,
03:35 20 in the news and all that, but I was just -- I don't know. I
21 just put I was uncertain about it when I wrote it and I said
22 "unsure."

23 THE COURT: Okay. You understand that in our criminal
24 justice system anybody who's accused of a crime is presumed to
25 be innocent unless the government proves the person guilty by

1 the evidence at trial and proves that beyond a reasonable
2 doubt. The burden of proof -- of proving somebody guilty or
3 convicting somebody of a crime, the burden of proof is always
4 with the government alone. The government has the
5 responsibility to prove somebody guilty. One of the tasks, if
6 not the central task, of a juror is to listen to the evidence
7 in the case, based on the evidence presented in the course of
8 the case, decide whether the government has done that or not,
9 whether it's succeeded in proving the person guilty beyond a
03:36 10 reasonable doubt.

11 The defendant doesn't have any burden to prove that
12 he's not guilty or to explain anything. It's up to the
13 government entirely to prove the proposition that it advances,
14 and that is, that he's guilty. Do you understand that?

15 THE JUROR: Yes.

16 THE COURT: If you were a juror in this case, would
17 you be able to act faithfully and properly apply those
18 principles in deciding the issues in the case?

19 THE JUROR: Yes.

03:36 20 THE COURT: If the government had failed to convince
21 you of any of the charges beyond a reasonable doubt, would you
22 have any hesitation in concluding that the government's proof
23 had failed and that the defendant was, therefore, not guilty of
24 that offense?

25 THE JUROR: Could you just explain that one more time,

1 the last sentence?

2 THE COURT: Let me -- I combined a couple of things
3 there. The burden of proof being placed on the government
4 means, as I've said, that the responsibility of proving its
5 proposition that it has advanced by the accusation, the
6 government proposes by its accusation that the defendant is
7 guilty of an offense. The government has to prove that. The
8 defendant doesn't have to prove the opposite. He doesn't have
9 to prove he's not guilty.

03:37 10 The question is never which side has convinced me
11 about this case. The question is: Has the government
12 convinced me that the defendant is guilty, okay? Do you
13 understand that?

14 THE JUROR: Yes.

15 THE COURT: If the government has -- with respect to
16 any of the particular charges, the evidence is not sufficient,
17 in your judgment, that you're convinced beyond a reasonable
18 doubt that the defendant is guilty of that offense, would you
19 be able in that circumstance to make your verdict not guilty
03:38 20 because the government had not proved its case?

21 THE JUROR: I'm not sure. I understand what you're
22 saying, but I don't -- I'm not certain what I can -- what my
23 answer is.

24 THE COURT: What's troubling you?

25 THE JUROR: So you want me to -- if the government

1 doesn't present enough evidence, you want me to say that I
2 think he's guilty or not guilty? Is that what it is?

3 THE COURT: Not quite. Under the law, if a jury
4 concludes and an individual juror concludes that the government
5 has not presented evidence that proves guilt beyond a
6 reasonable doubt, under that circumstance the juror's duty is
7 to return a verdict of not guilty because the government has
8 failed in its proof. Do you understand that?

9 THE JUROR: Yes.

03:39 10 THE COURT: The question is if, at the trial, your
11 conclusion as to any one of the charges or all of them that the
12 government had failed to produce what needed to be produced to
13 convince you beyond a reasonable doubt, if that happened, would
14 you be able to return a verdict of not guilty?

15 THE JUROR: Yes.

16 THE COURT: Are you -- you sure you understand my
17 question? You look a little uncertain. That's why I ask.

18 THE JUROR: I just -- I'm not sure because you want me
19 to say either guilty or not guilty, right?

03:39 20 THE COURT: What other option might there be?

21 THE JUROR: I understand that, but it's just --

22 THE COURT: I'm not asking you to tell us how you
23 would decide this case.

24 THE JUROR: Okay.

25 THE COURT: I'm not asking that. I'm asking whether

1 you could faithfully apply the principle of law that says, if
2 you're not convinced beyond a reasonable doubt as to any of the
3 counts, then your vote is not guilty?

4 THE JUROR: Okay. Yes.

5 THE COURT: Okay? Are we together now?

6 THE JUROR: Yes. This is just, like, a question.
7 It's not against -- it's not about this case. It's just a
8 question in general.

9 THE COURT: No. It's about -- it is in general, but I
03:40 10 want to tie it to this case. If you're a juror in this case,
11 would there be any difference in your ability to apply that
12 principle?

13 THE JUROR: No.

14 THE COURT: Okay. Let me ask you to turn to Page 23.
15 Beginning at Question 88, we asked a series of questions about
16 the people's attitude towards the death penalty. 88 was that
17 very general question, If you have any views, what are they?
18 And you said "uncertain." Can you tell us anything --

19 THE JUROR: This is the first time that I ever really
03:41 20 had to think about the death penalty, and I just -- I'm really
21 undecided about it.

22 MR. WEINREB: Is it time to interrupt and --

23 THE COURT: Okay. No further --

24 MR. WEINREB: No.

25 THE COURT: Thank you.

1 MR. WEINREB: Thank you.

2 THE CLERK: Juror No. 215.

3 THE JURY CLERK: Juror 215.

4 THE CLERK: Ma'am, over here, please. Have a seat.

5 THE COURT: Thanks for your patience. Since you were
6 last here, have you been able to follow my instructions to
7 avoid any discussion of the substance of the case?

8 THE JUROR: Uh-huh.

9 THE COURT: Or the process?

03:43 10 THE JUROR: Uh-huh.

11 THE COURT: And also to avoid, as you could, any news
12 media accounts of this case or what's going on?

13 THE JUROR: Yes.

14 THE COURT: Okay. That's the questionnaire you filled
15 out. So we're going to ask you some follow-up questions about
16 it. Tell us a little bit about your employment.

17 THE JUROR: Right now I'm working part time as a
18 bookkeeper for a small company.

19 THE COURT: I see you're pursuing accounting studies
03:43 20 still?

21 THE JUROR: Yes, yes.

22 THE COURT: Can you give us an idea of what the part
23 time is? How much -- how much time is part time?

24 THE JUROR: About 17 hours a week. I usually work
25 Monday afternoons, Wednesday and Friday all day.

1 THE COURT: Okay. In Question 33, on Page 11, you
2 said that -- I guess one of your brothers is a public defender.

3 THE JUROR: Yes.

4 THE COURT: Where does he work?

5 THE JUROR: Salem, Mass.

6 THE COURT: Committee for Public Counsel Services,
7 does that sound familiar?

8 THE JUROR: I don't know.

9 THE COURT: You don't know?

03:44 10 THE JUROR: I'm not really too close to him. He's a
11 half-brother.

12 THE COURT: I see. How long has he been a public
13 defender as far as you know?

14 THE JUROR: Ten years.

15 THE COURT: Is that the entire time he's been a
16 lawyer, or did he do something as a lawyer before that?

17 THE JUROR: You know, I think he -- you know what? I
18 don't think he's been a public defender for ten years. He's
19 been a lawyer for ten years so possibly five years. And I
03:44 20 think he was in private practice -- tried to do private
21 practice before that. I'm really not sure.

22 THE COURT: Apparently, he's not somebody you're
23 particularly close to?

24 THE JUROR: I'm not very close to him. He's a
25 half-brother. He's younger than I am.

1 THE COURT: You've had -- I'm on Page 15, Question 47.

2 THE JUROR: Oh, yes.

3 THE COURT: You have had jury service before.

4 THE JUROR: Yes.

5 THE COURT: Did both cases go all the way to verdict?

6 THE JUROR: Yes.

7 THE COURT: One was criminal; one was civil?

8 THE JUROR: Yes.

9 THE COURT: When were they, just as a --

03:45 10 THE JUROR: The civil was probably 16 years ago, and
11 the criminal was -- and I'm just estimating. I don't remember
12 what year it was. Possibly five or six years ago.

13 THE COURT: Where was --

14 THE JUROR: They were both in Salem.

15 THE COURT: Salem District Court or the Superior
16 Court, do you remember?

17 THE JUROR: One was in Superior, I believe, and one
18 was in District.

19 THE COURT: Do you remember which was which?

03:46 20 THE JUROR: I believe the criminal was in superior and
21 the civil was in district.

22 THE COURT: If you'd turn to Page 20, Paragraph -- I'm
23 sorry, Question No. 77, we asked whether, as a result of things
24 you'd read or seen in the news or learned from otherwise, had
25 you formed an opinion about -- or that the defendant was guilty

1 or that he was not guilty or that he should receive the death
2 penalty or that he should not receive the death penalty. And
3 to the we gave you three selections: yes, no, and unsure. To
4 each of those you indicated "unsure." Can you tell us a little
5 bit about why you selected that answer for each of those
6 questions? Let's start first with (a) and (b).

7 THE JUROR: Okay. To be honest, I really didn't
8 follow the case. I didn't watch a lot of TV. I knew a little
9 bit about it, just -- I would be unsure because I don't know
03:47 10 enough to make an opinion about something like that.

11 THE COURT: Okay. I was focusing on (a) and (b).
12 Does that apply to (c) and (d)?

13 THE JUROR: Yeah. I think (c) and (d), I would need
14 to learn a lot more before I could make a decision about
15 something like that.

16 THE COURT: So you've served on a criminal jury, so I
17 think you appreciate the principles that apply, but let me just
18 remind you of them. Any person who's accused of a crime is
19 presumed to be innocent of the crime unless the government
03:48 20 proves that he's guilty by the evidence at trial and proves it
21 beyond a reasonable doubt. So the government always has the
22 burden of proving its proposition that the defendant is guilty.
23 The defendant doesn't have any responsibility or burden to
24 prove that he's not guilty or to explain anything. That's
25 always -- the burden always rests with the government.

1 And so that if a juror considering a particular charge
2 made against someone is not convinced beyond a reasonable doubt
3 that the government's proof -- by the government's proof that
4 the person is guilty, the juror's responsibility is to declare
5 the verdict not guilty. Do you understand that?

6 THE JUROR: Not unsure but not guilty.

7 THE COURT: Right. But the point is not -- well,
8 jurors can be unsure during the course of the trial, of course,
9 and then at the end they begin to think about it and talk about
03:48 10 it with each other. What I'm getting at is there's never any
11 responsibility on a defendant to prove himself not guilty or
12 innocent. He's presumed to be innocent. The government has to
13 in a sense change the jury's mind about that by proof.

14 THE JUROR: Right.

15 THE COURT: Would you have any difficulty in applying
16 those principles properly in a case -- in this case if you were
17 a juror?

18 THE JUROR: No.

19 THE COURT: Okay. You understand --

03:49 20 THE JUROR: Yes, I do understand.

21 THE COURT: Okay. Let me -- so let me ask you to turn
22 to Page 23. Beginning with Question 88, we asked jurors about
23 some -- about the death penalty and what their views might be
24 in Question 88. We asked, if you had general views about the
25 death penalty, to say what they were.

1 THE JUROR: Uh-huh.

2 THE COURT: You left it blank.

3 THE JUROR: Uh-huh.

4 THE COURT: Is it proper to interpret that that you
5 don't have any general views about it, proper or improper?

6 THE JUROR: You know, honestly, I really -- I've never
7 been put in a position where I've had to think hard about the
8 death penalty, and I -- you know, I don't have -- I really
9 didn't have anything that I could add down there.

03:50 10 THE COURT: Nothing wrong with that. We just want to
11 make sure that we're understanding your answer properly.

12 THE JUROR: I should have put N/A or --

13 THE COURT: That's all right.

14 In the next question, we asked you to place yourself
15 on a scale from strongly opposed to strongly favor. And,
16 again, you didn't circle anything but said you could not answer
17 without having all the information about this case.

18 THE JUROR: Right. That's just how I feel.

19 THE COURT: I think we were asking not about this case
03:50 20 but about the death --

21 THE JUROR: In general.

22 THE COURT: In general, for this question. Do you
23 have any -- could you put yourself anywhere on that scale, as a
24 general matter, about the death penalty, from strongly opposed
25 to strongly favor? If you're unsure, that's fine, too.

1 THE JUROR: I can't answer that.

2 THE COURT: As I said earlier when we had the group of
3 you, there are no right or wrong answers. We just want your
4 answers.

5 THE JUROR: I don't have a strong opinion about that,
6 I guess.

7 THE COURT: Page 24, the next page, Question 90, here
8 we asked you to look at the series of possible statements and
9 select one that you thought was closest to your view about the
03:51 10 death penalty. You selected (d), and you said, "I'm not for or
11 against the death penalty. I could vote to impose it or I
12 could vote to impose a sentence of life imprisonment without
13 the possibility of release, whichever I believed were called
14 for by the facts and the law in the case."

15 So here, I guess, you thought you could signal that
16 that represented your view, whereas you were a little bit
17 hesitant on the previous two questions.

18 THE JUROR: Still seems to me answering that way I'm
19 still a little -- that I could -- it's just that I'm unsure
03:51 20 about that.

21 THE COURT: Right. You haven't thought things
22 through?

23 THE JUROR: Right.

24 THE COURT: Well, let me ask it the other way.

25 Apparently, if you don't have strong views so that you could

1 say I could go -- I could vote for it, I could vote for life
2 imprisonment, I take it then that you're not of the view that
3 you favor one of them over the other as a general proposition?

4 THE JUROR: No.

5 THE COURT: Is that --

6 THE JUROR: Yes. You can take that.

7 THE COURT: You have to -- you really are in suspended
8 judgment until you have heard a particular case; is that what
9 you're saying?

03:52 10 THE JUROR: I think that that's how I feel, yes.

11 THE COURT: Okay. In Questions 95 and 96 -- and 95 is
12 at the bottom of 25 -- we asked two sides of a question. If
13 you found this defendant guilty -- you understand, by the way,
14 that the question of what the penalty is only arises if a
15 person is convicted of a crime that carries the potential of a
16 death penalty? So the premise is, if you're considering the
17 death penalty, you've already convicted somebody of a serious
18 murder, right?

19 THE JUROR: Right.

03:53 20 THE COURT: So 95 says, If you found the defendant
21 guilty and you decided the death penalty was the appropriate
22 punishment, could you conscientiously vote for the death
23 penalty? And you checked "yes."

24 THE JUROR: I know I did. That was, like, the last
25 checkbox that I checked.

1 THE COURT: Well, not quite. If you go to the top of
2 the next page --

3 THE JUROR: No. I went back to it.

4 THE COURT: I see. Fair enough. You left that blank
5 and went past it and then went back. Okay.

6 Let's look at 96. 96 asks the other side of that
7 question in a sense. That is, if you found the defendant
8 guilty and you decided life imprisonment without the
9 possibility of release was the appropriate punishment, could
03:53 10 you conscientiously vote for life imprisonment without the
11 possibility of release? And you checked that box "yes."

12 THE JUROR: I probably should have checked "I'm not
13 sure" to both of them. Those were really hard questions for
14 me. I just -- I know --

15 THE COURT: Right. We're not asking you to predict
16 what your decision would be in this case because that's -- you
17 don't have -- obviously, you haven't heard the case. Again,
18 we're trying to gauge whether you're in any -- whether there
19 are any reservations you have about either that we ought to
03:54 20 know about or whether you're simply in the position where you
21 can't commit to anything until you've heard -- if you're a
22 juror, would ultimately hear.

23 THE JUROR: I think that's how I feel. I really feel
24 that I can't -- I should have probably answered I was not sure
25 to those two questions. I don't know why I answered "yes," but

1 I guess I felt that if I heard what I needed to hear to vote
2 that way, then I would be able to consciously vote that way in
3 both those questions.

4 THE COURT: Okay. All right. Follow-up?

5 MR. WEINREB: Good afternoon. My name is Bill
6 Weinreb. I'm one of the prosecutors in the case. If I could,
7 I'd just like to pick up where the Court left off just now.

8 So you said, if you heard what you needed to hear. So
9 I think, as the judge explained, if the defendant's found
03:55 10 guilty by the jury of a crime that carries a sentence of death,
11 a potential sentence of death, then there will be a second
12 phase of the trial, and the parties will -- the prosecution and
13 the defense will each offer evidence suggesting what the
14 appropriate penalty should be.

15 And the real question is: Could you listen to all
16 that evidence with an open mind and, at the end of it,
17 depending on whether it convinced you one way or the other,
18 vote for a death sentence or for a sentence of life
19 imprisonment without release?

03:56 20 And before you answer, the thing I want to make clear
21 is the parties aren't going to be debating whether there should
22 be a death penalty or not or whether a crime should be
23 punishable potentially by death or not. That's just the law
24 that the judge will instruct you on, that certain crimes are
25 and that there is a death penalty. The question will just be

1 whether it's the appropriate sentence or not.

2 And so the real thing that I think both sides are
3 trying to get at is could you -- are you able to consider all
4 that evidence, decide which one -- which sentence you think is
5 appropriate, and vote for it? Could you do that?

6 THE JUROR: Yes, I believe so.

7 MR. WEINREB: Okay. And so -- and just to break that
8 down, if you -- not necessarily -- not in this case but just in
9 general, if you were on a case where you heard evidence that
03:57 10 convinced you that a death sentence was appropriate in this
11 case, even though it might not be in other cases, could you
12 actually do it, meaning could you vote to sentence someone to
13 death knowing that your vote would be part of what meant that
14 they would get the death penalty and you could never take that
15 back? Is that something you would actually be able to do, do
16 you think?

17 THE JUROR: I don't know.

18 MR. WEINREB: This is our only chance to find out
19 whether you could do it or not. So let me ask you to think
03:57 20 about it. Is that the best you can do at this point, you
21 think? You just don't know?

22 THE JUROR: I think so, yeah.

23 MR. WEINREB: So there's a possibility you would not
24 be able to no matter -- even if the evidence showed it was an
25 appropriate sentence?

1 MR. BRUCK: Objection. It's not the evidence that
2 shows. It's the juror deciding.

3 THE COURT: Sustained. I agree with you. Sustained.

4 MR. WEINREB: If at the end of the trial you heard all
5 the evidence and you decided that the death sentence was an
6 appropriate one for this particular case rather than -- even if
7 it wouldn't be in others, you're not sure that you could
8 actually do it? You could actually sentence someone to death?

9 MR. BRUCK: Object to leading.

03:58 10 THE COURT: Go ahead. You can answer it, I guess.

11 THE JUROR: I don't know right now.

12 MR. WEINREB: Thank you.

13 MR. BRUCK: Good afternoon, ma'am.

14 THE JUROR: Hi.

15 MR. BRUCK: My name is David Bruck, and I'm one of
16 Jahar Tsarnaev's attorneys, and I just want to follow up on a
17 few things.

18 Mr. Weinreb -- I want to be sure we're on the same
19 page or talking about apples and apples with the question that
03:58 20 Mr. Weinreb just asked you. I think the question wasn't
21 whether you will -- whether you would impose the death penalty
22 in this case. You wrote you don't know the facts, right?

23 So you said you were undecided. And you would want to
24 hear the facts before you made up your mind? Is that where you
25 stand?

1 THE JUROR: Yes, yup.

2 MR. BRUCK: Okay. You haven't decided the case
3 already?

4 MR. WEINREB: Objection, your Honor. These are all
5 leading questions.

6 THE COURT: Yeah, they are.

7 MR. BRUCK: The question that I think Mr. Weinreb
8 meant to ask you is, if you heard all the evidence, you first
9 convicted -- you and the rest of the jury convicted the
03:59 10 defendant, any defendant, of a case -- of a crime that could
11 carry the death penalty, then there would be a second phase,
12 and the government would present evidence that made this an
13 especially bad case or that made this person an especially bad
14 murderer and the defense presented evidence that said that
15 maybe life imprisonment was adequate, and you heard it all and
16 decided that this particular case, based on all the facts you
17 had heard, that this was an appropriate case for the death
18 penalty, and that was your opinion, that's the question. If it
19 was your opinion that the death penalty was the right thing to
04:00 20 do, could you do it?

21 THE JUROR: I think, if it was my opinion that that
22 was the appropriate punishment, then I wouldn't consider it if
23 it wasn't my -- yes, I think -- I guess the answer would be
24 yes.

25 MR. BRUCK: Right. You see what the questioning is.

1 Some people might not have the courage of their convictions.
2 And the question we're asking you is, if your conviction was
3 the death penalty was the right thing to do -- we're not saying
4 it will be.

5 THE JUROR: Right.

6 MR. BRUCK: But if it was, could you vote to impose it
7 understanding nobody wants to but could you?

8 MR. WEINREB: Objection, your Honor.

9 THE COURT: Yeah. Let's let her answer the question
04:01 10 if you're able to.

11 THE JUROR: I want to say yes, but part of me still
12 says I'm unsure.

13 THE COURT: Why is that? Let me just --

14 THE JUROR: I don't know. I feel like, if I made that
15 decision that that was -- if I made that decision, that that
16 was my -- inside me, that I decided that that was what was
17 right and that was -- I would want to say, yes, I could vote
18 for it. But there's a little piece of me inside of me that
19 says that I'm not sure that, you know, that --

04:02 20 THE COURT: Okay.

21 MR. BRUCK: Is that -- are you telling us that's
22 something that you could never -- are you feeling that no one
23 can ever say that until they are in the situation?

24 THE JUROR: I think --

25 MR. WEINREB: Objection, your Honor. Whether that's

1 the case or not, that's not the question here.

2 THE COURT: I think we have the picture here.

3 MR. BRUCK: Thank you.

4 THE COURT: Okay. Thanks.

5 The next one that was on our list, 219, you probably
6 know has been postponed. So that leaves three. I would be
7 inclined --

8 (Discussion held off the record.)

9 THE COURT: There would be three left.

04:03 10 MR. BRUCK: Want to take a short break?

11 THE COURT: Why don't we do 1:30. How's that? That
12 will help the jurors get on their way.

13 (Recess taken at 12:55 p.m.)

14 (After the recess:)

15 (The Court enters the courtroom at 1:40 p.m.)

16 MR. WEINREB: Before we call out the next juror, can I
17 be heard for a minute? It can be on the record.

18 THE COURT: Okay.

19 MR. WEINREB: Your Honor, I would like to renew the
04:47 20 motion I made several days ago that Mr. Bruck in particular,
21 but nobody, instruct jurors on the appropriate way to
22 deliberate in the jury room. That strikes me as wholly
23 inappropriate. And in particular, the instruction that seems
24 to be being given, even if it is phrased in terms of a
25 question, is that no juror attempt to change another juror's

1 subjective view as to whether the death penalty is appropriate
2 in a given case. And the result -- or seemingly the intended
3 effect of that instruction to these jurors about how to
4 deliberate and not deliberate is to encourage the possibility
5 of a hung jury; in other words, to say to jurors who might
6 naturally be leaders on the jury and help to persuade others to
7 reach a unanimous verdict, that they should not do that. That
8 just as it's their personal subjective decision as to whether
9 to impose the death penalty, they should respect others'
04:48 10 subjective opinions and not try to change them.

11 That is not the law. In the *Jones* case in the Supreme
12 Court, the court wrote about the importance of unanimous
13 decisions by jurors, and in death penalty cases in particular,
14 just as it's an important consideration in all cases, and it's
15 perfectly appropriate for jurors to try to change the minds of
16 others. And it's undoubtedly a common situation on juries that
17 leaders emerge who try to convince the other jurors and help to
18 achieve a unanimous verdict, and that should be encouraged and
19 not discouraged.

04:49 20 This juror candidate in particular seemed to be in no
21 need of any instruction on that score. When first asked about
22 it, he said that he understood as a manager that it's important
23 to listen to others, and nevertheless, Mr. Bruck persisted in
24 making sure that he understood that he should let others have
25 their opinions even if they differ from his.

1 And it's that kind of pushing the jurors in a
2 particular direction about a matter that has nothing to do with
3 voir dire and everything to do with trying to affect what
4 happens in the jury box later on that the government thinks is
5 inappropriate and should be prohibited.

6 MR. BRUCK: This has come up with a grand total of two
7 jurors who were both engineers in supervisory capacities. And
8 this was a juror who had talked about reaching consensus in a
9 way that raised the question of whether or not he understood
04:50 10 that in the end jurors had to make individual -- I think the
11 Supreme Court's language is "reasoned moral responses to the
12 evidence," which is not the same as an engineering problem or a
13 pile of bricks.

14 And I think it was appropriate in -- for that
15 particular juror to simply ask whether or not he would respect
16 or could respect other -- the fact that other jurors might
17 reach different moral views, and that was the end of the
18 inquiry.

19 THE COURT: Well, okay. I think the purpose here is
04:51 20 to discover disqualifying bias or other issues. That's the
21 principal purpose, and we have to remain focused on that.
22 There's no single script that we could follow as we do that.

23 I agree with the general proposition that this is not
24 an occasion for argument or instruction, so -- it's obviously
25 difficult for jurors who are not used to this process, who are

1 not used to thinking the way we think about cases, to process
2 questions about "what would you do if." It's just very hard.
3 And for them to be uncertain about that, to express
4 reservations about their ability to do something in the future
5 on some hypothetical set of -- or unknown set of data, really
6 has questionable utility in this process.

7 I mean, there's some people you can get a sense that
8 they have a disability of some kind with respect to being able
9 to handle their responsibility as jurors, but you'll have very
04:52 10 qualified jurors who think, because they're being asked the
11 questions, that they should doubt what they don't doubt, and
12 that's one of the problems we have here.

13 I think that was a ruling. I'm not sure.

14 (Laughter.)

15 THE COURT: All right. 223?

16 THE CLERK: Juror No. 223.

17 MR. McALEAR: Juror No. 223.

18 (Juror No. 223 enters the courtroom.)

19 THE CLERK: Ma'am, over here, please.

04:53 20 Have a seat.

21 THE JUROR: Thank you.

22 THE CLERK: Speak into the mic and make sure you speak
23 loud enough so everyone can hear you.

24 THE COURT: Good afternoon.

25 THE JUROR: Good afternoon.

1 THE COURT: Since you were here last have you been
2 able to follow my instructions to avoid any discussion of the
3 case and --

4 THE JUROR: Kind of.

5 THE COURT: I'm sorry?

6 THE JUROR: Kind of.

7 THE COURT: What's the qualification?

8 THE JUROR: What's a "qualification"?

9 THE COURT: What do you mean "kind of"?

04:53 10 THE JUROR: Oh, yes, yes, yes. No, I think I got it.

11 THE COURT: Okay. And avoid any news media reports on
12 the case?

13 THE JUROR: Yes, yes, yes.

14 THE COURT: Okay. So that's the questionnaire you
15 filled out. We're going to follow up on it with some of the
16 answers you gave.

17 THE JUROR: Okay.

18 THE COURT: Let me ask you to tell us about your work
19 position.

04:54 20 THE JUROR: Oh, I'm a financial analyst.

21 THE COURT: What does that involve? What do you --

22 THE JUROR: It's like a lot of financial information.
23 It's kind of an explanation for the company and then do a lot
24 of financial reporting, do the budgeting, forecasting for the
25 company, those stuff.

1 THE COURT: Is it -- this is a fairly large company.

2 Is it company-wide or are you a division?

3 THE JUROR: I'm in a division. I'm in the Quincy
4 division, is my current job, yeah.

5 THE COURT: Okay.

6 THE JUROR: The headquarter in Marlborough, so... I'm
7 in Quincy.

8 THE COURT: So you're in Quincy?

9 THE JUROR: Yes.

04:54 10 THE COURT: If you'd look on page 5 of the
11 questionnaire, under Question 10 you express some concern about
12 whether your job would be in jeopardy.

13 THE JUROR: Yes.

14 THE COURT: Have you explored that further since this
15 questionnaire was filled out?

16 THE JUROR: Yes, I think it's going to impact my life,
17 basically, my job. I have a very demanding full-time job. I
18 have children. And then it's -- because it's if I -- it seems
19 like two work -- I mean, pretty much two jobs, if I come here
04:55 20 and then go home, still have work. Like, for example, last
21 night I received a phone call to come here to the jury duty,
22 and then worked until, like, 10:30 last night.

23 I guess it's kind of an impact on my job since I would
24 have two full-time jobs.

25 THE COURT: Has anybody at work told you that, that if

1 you were serving they would continue to expect you to be
2 working full time or --

3 THE JUROR: No.

4 THE COURT: -- or that it would somehow cost you your
5 job?

6 Have you discussed it with anybody at work?

7 THE JUROR: No, not yet. Not that far yet.

8 THE COURT: Okay.

9 And with respect to the children, it looks like
04:56 10 they're mid-teenagers?

11 THE JUROR: Yeah, yeah, my daughter will be applying
12 for college this year. So we would plan for the school visit
13 in the spring.

14 THE COURT: She's a junior?

15 THE JUROR: Yes, she's a junior.

16 THE COURT: Okay. Thank you.

17 THE JUROR: Thank you.

18 (The juror is excused.)

19 MR. McALEAR: Right this way, ma'am.

04:56 20 THE CLERK: Juror No. 229.

21 MR. McALEAR: Juror No. 229.

22 (Juror No. 229 enters the courtroom.)

23 THE CLERK: Ma'am, over here, if you would, please.

24 Have a seat.

25 Speak into the mic so everybody around here can hear

1 you, okay?

2 THE JUROR: Okay.

3 THE CLERK: Okay. Thanks.

4 THE COURT: Good afternoon.

5 THE JUROR: Good afternoon.

6 THE COURT: Have you been able, since the last time
7 you were here, to abide by my instructions to avoid any
8 discussion of the substance of the case with anybody or the
9 process or anything like that?

04:58 10 THE JUROR: Uh-huh.

11 THE COURT: And have you also, to the extent you've
12 been able, avoid media reports about the case or the process?

13 THE JUROR: Yes.

14 THE COURT: So that's the questionnaire you filled
15 out, and we're going to follow up on some of the questions.

16 THE JUROR: Can I open it?

17 THE COURT: You can. I'm going to start on page 6.
18 And the question is a quick one. It gives a little information
19 about your husband and his work. You say he's a financial
04:58 20 advisor?

21 THE JUROR: Yes.

22 THE COURT: Can you tell -- put that in a little more
23 context, what it is he does?

24 THE JUROR: Sure. He works in a family business for
25 RBC. It's called the McCarthy Group. And he's a financial

1 advisor, just as far as long-term planning.

2 THE COURT: I see.

3 THE JUROR: Investments.

4 THE COURT: Personal wealth, is that what you're
5 talking about?

6 THE JUROR: Yeah, exactly.

7 THE COURT: How long has he done that?

8 THE JUROR: Oh, let's see. I'm going to go with --
9 God, I think going on 21 years.

04:59 10 THE COURT: Okay. And your own work?

11 THE JUROR: Well, I don't know what I want to be when
12 I grow up, but I do do a little bit of everything. I run
13 events right now, I was a social worker, and I do volunteer for
14 HAWC. I think that's on here.

15 THE COURT: Yeah, I was going to ask you what that
16 acronym means.

17 THE JUROR: So it was a haven for domestic violence.
18 And basically what we do is --

19 THE COURT: What do the letters mean?

04:59 20 THE JUROR: Well, they just changed it. Now I'm
21 nervous. What is it? It's Haven for Wellness and Change
22 [sic], so... And it's out of Salem.

23 THE COURT: Okay.

24 THE JUROR: And basically what we do, I'm on call for
25 people who suffer from domestic violence.

1 THE COURT: Do you counsel or --

2 THE JUROR: It's just a hotline. So basically what I
3 do is I make a plan with them to be referred to -- you know,
4 make sure they're in a safe situation, and I refer them to the
5 best situation.

6 THE COURT: Okay. I'm looking at Question 26 on page
7 10 where you talk about your event planning and so on.

8 THE JUROR: Okay.

9 THE COURT: Did I say page 26?

05:00 10 THE JUROR: You did.

11 THE COURT: Page 10, Question 26. Sorry.

12 THE JUROR: Okay.

13 THE COURT: Just from the dates, homemaking prior to
14 the event planning, but there's an overlap there. So is it you
15 were doing both at the same time?

16 THE JUROR: I was.

17 THE COURT: Is the event planning a full time, part
18 time?

19 THE JUROR: No, I do contract work for them. So they
05:00 20 call me when they want me to work, and I can say yes or no.

21 THE COURT: When they get a particular event?

22 THE JUROR: Yes. Right. Exactly. I mean, they would
23 like me to work a lot more, but because I have the children I
24 just kind of get to pick and choose.

25 THE COURT: I see.

1 Next page, page 11, Question 33, you have a friend who
2 is a Homeland Security lawyer?

3 THE JUROR: Yes.

4 THE COURT: Tell us about that. Do you know what this
5 person does?

6 THE JUROR: Right now she works in immigration. She
7 just moved up here. Her parents were sick. So she was down in
8 Miami, and now she works out of Hartford. So she does a lot of
9 the Homeland Security with people who are in immigration, are
05:01 10 illegal status.

11 THE COURT: And is this somebody you're close to or is
12 this just somebody who's an acquaintance? Can you give us --

13 THE JUROR: Sure. She was my roommate in college, and
14 we've been friends ever since, so over 20 years.

15 THE COURT: But you're not neighbors --

16 THE JUROR: No.

17 THE COURT: -- because she's long distance.

18 THE JUROR: No, no. She lived in Miami, but she had
19 to move back because, unfortunately, both her parents are ill,
05:02 20 so she takes care of them.

21 THE COURT: So how do you stay in touch?

22 THE JUROR: By phone. She's actually back in Miami
23 selling her house.

24 THE COURT: Also on page 11 at the top we asked about
25 social media.

1 THE JUROR: Uh-huh.

2 THE COURT: You said Facebook infrequently?

3 THE JUROR: Yeah, just to kind of spy on my kids.

4 THE COURT: Page 14, Question 42, you've been a
5 witness, I guess, probably when you were a social worker?

6 THE JUROR: Yeah, a long time ago. Yup.

7 THE COURT: And then also personal family matter, I
8 guess?

9 THE JUROR: Oh, yeah. I took care of my uncle who
05:02 10 passed away last year, and his ex-girlfriend's daughter was
11 suing him for rent even though they lived together. I just
12 felt like I had to stand up for him.

13 THE COURT: So that was fairly recent?

14 THE JUROR: Within the last two years.

15 THE COURT: How about the other one?

16 THE JUROR: Oh, God. That was a long time ago. That
17 was probably -- had to be in the '90s.

18 THE COURT: All right. So now turn to page 20, if you
19 would, please.

05:03 20 THE JUROR: Sure.

21 THE COURT: Question 77.

22 THE JUROR: Okay.

23 THE COURT: In that question we ask a multiple-choice
24 sort of question with available boxes for you to check about
25 whether you'd formed an opinion about whether the defendant was

1 guilty or not or if he should receive the death penalty or not
2 based on things you'd seen in the news or learned about
3 otherwise. And you -- for the available choices, yes, no or
4 unsure, for each of those you checked "unsure."

5 THE JUROR: Uh-huh.

6 THE COURT: Would you just tell us about that, why you
7 chose that box?

8 THE JUROR: I would have to say because of a lot of --
9 when it happened -- was through the media that I heard about
05:04 10 it. And, you know, I just think I'm a little bit jaded with
11 the media, and I just thought with our legal system I should
12 keep an open mind. You know, through my education and, you
13 know, I just know what the media tells us, there's always more.
14 So I felt like, you know, you're innocent before proven guilty,
15 that I should have that open mind. So I had to answer that
16 fairly.

17 THE COURT: And would you be able to, if you were a
18 juror in the case, follow that principle, that a person accused
19 of a crime is innocent until proven guilty by the evidence at
05:04 20 trial?

21 THE JUROR: Yes.

22 THE COURT: In your capacity as a social worker or in
23 your volunteer capacity, have you had any connection with or
24 association with criminal prosecutions?

25 THE JUROR: Well, what I do right now as far as with

1 HAWC is we have to stay very non-judgmental. And the advice
2 that we give people has to be one of just support and
3 empowerment and not what -- you know, we can't persuade them
4 either way.

5 And when I was a social worker, what I did mainly was
6 crisis work. And, again, that was where I would go in and make
7 a plan for the person's safety but I couldn't tell them what to
8 do and I couldn't judge the situation or what was going on.

9 THE COURT: So would you be able, in this case,
05:05 10 although it has some notoriety, to listen to the evidence, hold
11 the government to its burden of proof, which is to prove the
12 defendant guilty of any of the crimes that he's charged with
13 beyond a reasonable doubt by the evidence at trial, and if you
14 thought the government had not sustained its burden on any of
15 the counts, would you be able to find the defendant not guilty
16 as to that count?

17 THE JUROR: Yes, I think so.

18 THE COURT: Any hesitation?

19 THE JUROR: Well, I mean, it's a weighty question, but
05:06 20 I want to believe that, yes, I would, because I feel like, you
21 know, as we learned today with the videos and everything I've
22 been thinking about is that, you know, if it was myself or
23 someone I knew who was in this situation, that I would want
24 that fair trial.

25 THE COURT: Okay. Beginning on page 23 we asked a

1 series of questions about jurors' thoughts or attitudes about
2 the death penalty, and that begins with Question 88 on 23.

3 THE JUROR: Sure.

4 THE COURT: 88 is a general question: Do you have any
5 views about the death penalty in general? and you said none.
6 Is that accurate?

7 THE JUROR: Yeah, I think that -- well, maybe as far
8 as like -- what do you mean "in general"?

9 THE COURT: I guess as a policy matter should there be
05:07 10 a death penalty or not or are there occasions when it is
11 appropriate and occasions when it's not? I mean, people could
12 have various thoughts about it, that's all. We're really
13 trying to get you to tell us whatever occurred to you in
14 response to that, so...

15 THE JUROR: Right. So I think on 91 I explained that
16 I feel that it is case to case in my mind. So I don't know if
17 "none" is an appropriate answer to that one. So, I mean, I
18 feel it's case by case.

19 THE COURT: Okay. We'll get there. We'll work
05:07 20 through them.

21 THE JUROR: Sorry.

22 THE COURT: In 89 we asked you to see if you could
23 position yourself on a scale of 1 to 10 in terms of being
24 strongly opposed or strongly in favor, and you chose -- I guess
25 you chose 6 first and then changed it to 5.

1 THE JUROR: I feel like it should be the middle
2 because, again, I feel it's case by case.

3 THE COURT: Okay. And then the next page, Question
4 90, we set forth a series of statements that people could
5 possibly agree with or disagree with, and asked you to select
6 one that you thought best described your feelings about the
7 death penalty for someone who has been proven guilty of murder,
8 and you selected D saying you're not for or against the death
9 penalty. "I could vote to impose it or I could vote to impose
05:08 10 a life imprisonment without the possibility of release,
11 whichever I believe was called for by the facts and the law in
12 the case."

13 Does that fairly represent your view?

14 THE JUROR: Yes.

15 THE COURT: And when you were referring to 91, you're
16 kind of saying the same thing?

17 THE JUROR: Right. Right.

18 THE COURT: Is this something that -- it's
19 understandable if jurors, when they came in in early January,
05:09 20 hadn't thought a lot about the death penalty at that point and
21 when we asked you to fill out these questionnaires. Have you
22 thought about it more since then at all?

23 THE JUROR: Oh, absolutely. Since I left, you know,
24 having to answer that question, of course. But has it changed?
25 No. I mean --

1 THE COURT: That was going to be my next question.

2 Have you changed your view in any way?

3 THE JUROR: No.

4 THE COURT: The bottom of 25, Question 95, we asked,
5 "If you found this defendant guilty and you decided the death
6 penalty was appropriate, could you conscientiously vote to
7 impose the death penalty?" and you said "yes."

8 THE JUROR: Uh-huh.

9 THE COURT: The next question is the reciprocal of
05:09 10 that. "If you found the defendant guilty and you decided that
11 life imprisonment without the possibility of release was the
12 appropriate punishment, could you conscientiously vote for that
13 penalty?" and you said "yes."

14 THE JUROR: Do you feel like that's a contradiction?

15 THE COURT: No, I don't necessarily. Do you?

16 THE JUROR: No, I don't. I think it's depending on
17 what the facts are.

18 THE COURT: Okay. Follow-up?

19 MR. MELLIN: Your Honor, may I ask a few questions?

05:10 20 THE COURT: Okay.

21 MR. MELLIN: Good afternoon. I'm Steve Mellin. I'm
22 one of the prosecutors on the case. I'd like to jump back to
23 where Judge O'Toole started, which was a little bit of
24 discussion kind of about your master's of social work.

25 Your undergraduate degree, it looks like, was in

1 psychology. Is that right?

2 THE JUROR: Yes.

3 MR. MELLIN: What types of courses did you take for
4 that? I didn't mean that to be a trick question.

5 THE JUROR: I know. It was just a thousand years ago.
6 So behavioral psych. I did concentrate more in adolescent at
7 the time, so adolescent psych, family and children.

8 MR. MELLIN: And "adolescent" to you means what? What
9 age are you talking about?

05:10 10 THE JUROR: Well, adolescent -- well, some theories it
11 could be 13 to 26.

12 MR. MELLIN: Okay.

13 THE JUROR: You know, depending on, you know, what
14 school of thought you came from, so...

15 But when I did work with children, for adolescents it
16 was considered 13 to probably 18.

17 MR. MELLIN: And what type of work did you do with the
18 children?

19 THE JUROR: Well, I've had many jobs in social work,
05:11 20 so I'm trying to think. To start off with, I did work at a
21 group home, Harbor Schools, and I was the lead social worker
22 there. So they were residents that were placed there. And so
23 I did a lot of case work, a lot of individual, and then a lot
24 of groups. And then overseeing the staff.

25 MR. MELLIN: How did the children end up at the home?

1 THE JUROR: Some of -- I would say most of them were
2 probably placed by the state at the time. They -- you know, if
3 they weren't able to be integrated into the community at their
4 homes, or if their homes weren't a place where they were being
5 able to kind of abide by laws and different things like that,
6 this was a place where they could be under supervision and get
7 an education as well.

8 MR. MELLIN: Okay. You mentioned earlier that you did
9 some work in kind of a crisis setting. Is this the crisis
05:12 10 setting or is that something else?

11 THE JUROR: No, no, I worked for Greater Lynn -- not
12 Greater Lynn. I'm sorry. I worked in Lynn at a crisis center,
13 so it was on-call. And I also worked in the crisis agency. So
14 if, say -- a lot through Lynn Union Hospital, if they had
15 people who came in who were, perhaps, suicidal and different
16 things like that, I was the initial person who did the
17 evaluation before the psychiatrist came onsite.

18 So I did the evaluation to see if the person should go
19 to the next step or if they could go home or if they could go
05:12 20 into outpatient therapy or if they needed to be in inpatient.

21 MR. MELLIN: Any interactions with law enforcement in
22 any of that where -- if the crisis was some type of domestic
23 abuse or anything like that where you would call the police?

24 THE JUROR: They would call me. So I was -- like the
25 police usually were the ones who brought them to the hospital.

1 Not all the time. I'm sorry. But that's how that happened.

2 Would I have to call the police? At my office
3 sometimes, you know, if somebody was -- you know, had a
4 psychotic break or something like that, or was getting violent,
5 then we did have to call for police assistance.

6 MR. MELLIN: And in the time you were working in
7 social work, did you do any psychological testing on any of the
8 people you were dealing with, anything like that?

9 THE JUROR: No, that wasn't my job. That was
05:13 10 done -- they were referred to me after that.

11 MR. MELLIN: Have you ever done any?

12 THE JUROR: Probably as, like -- you know, in graduate
13 school as part of a practicum, but it wasn't what I studied or
14 specialized in.

15 MR. MELLIN: Okay. So in this case if you were to
16 hear from psychologists, would you be able to decide the weight
17 to give that testimony based on hearing the testimony here in
18 court as opposed to maybe what you learned back a few years
19 ago?

05:13 20 THE JUROR: Honestly, you know, I don't know. I mean,
21 it was so long ago, it kind of seems like a lifetime ago. It
22 might trigger some things that I had in my education, but I
23 don't think I would consider myself like a professional in
24 that.

25 MR. MELLIN: Fair enough. Okay.

1 And then turning to the death penalty questions, you
2 kind of put yourself in the middle of the road on this. You
3 said that you have thought about it a little bit since we
4 handed you this little text to fill out.

5 What have you thought about the death penalty since
6 you filled out this questionnaire?

7 THE JUROR: Probably how my position has changed on
8 it, you know, as far as, like, you see me as a social worker, I
9 probably started out young probably being more liberal, and
05:14 10 then probably becoming -- as I became older and worked more a
11 little bit more open to, you know, that it's not very black and
12 white; that there's different things that come into play for me
13 as far as that decision.

14 MR. MELLIN: Okay. And you mentioned that you believe
15 that it's a case-by-case analysis, right?

16 THE JUROR: Uh-huh.

17 MR. MELLIN: If you did believe this was a case where
18 you thought the death penalty was appropriate, would you be
19 able to vote to impose the death penalty?

05:14 20 THE JUROR: Yes.

21 MR. MELLIN: Thank you.

22 MS. CONRAD: Good afternoon. My name is Miriam
23 Conrad. I'm one of Mr. Tsarnaev's lawyers.

24 Can you tell me a little bit more about some of the
25 things in your life experiences that caused you to change your

1 view about the death penalty?

2 THE JUROR: Probably having children myself and seeing
3 things -- you know, and as far as just things that -- cases
4 maybe I've come across or things I've seen in the news as far
5 as things happening.

6 MS. CONRAD: Can you be more specific? Any particular
7 cases that come to mind?

8 THE JUROR: No. I think just probably, you know, if
9 you had asked me this question 20 years ago, I would have said
05:15 10 absolutely not, and now I just think -- I'm just not as naive
11 and I just have to, you know, look at things from both sides.

12 MS. CONRAD: When was it exactly that you did do
13 social work? You said the '90s?

14 THE JUROR: Yes. And I still always -- like I said, I
15 always try to keep myself involved in some way, you know, as
16 far as like volunteering or something like that.

17 MS. CONRAD: So was it a conscious decision to leave
18 that field or was it more just change in circumstances?

19 THE JUROR: I'd say change in circumstances because I
05:16 20 made no money and my husband did, and so I didn't want to pay
21 someone to raise my kids.

22 MS. CONRAD: I understand. You said, I think in
23 answer to Mr. Mellin's question, about, you know, if the
24 circumstances called for it. Can you tell us a little bit more
25 about what kind of circumstances would be relevant to that in

1 your mind?

2 THE JUROR: Well, I just think -- like an example just
3 that would come to me -- I don't know. If the evidence just
4 was, like, just completely that this was just a malicious act
5 and this is the intention, then I guess that -- you know, if
6 there was no way around it, you know, but I think -- just the
7 facts would have to be there that I would really have to, you
8 know, think about it. I couldn't just say no right away; I
9 couldn't just say yes right away.

05:17 10 MS. CONRAD: I'm sorry. You could or could not say
11 yes right away?

12 THE JUROR: I think that I would have to have more
13 information either way. I don't think it's a decision -- like
14 I'm not somebody who's just going to say right at a cocktail
15 party that, yes, somebody should be put to death or, no, they
16 shouldn't. I need more information. I'm not going to just
17 jump to that.

18 MS. CONRAD: And would you be able to consider facts
19 regarding the defendant's background as well as facts regarding
05:17 20 the crime in making that determination?

21 THE JUROR: Yeah, absolutely. I think that's probably
22 where my thought process would be.

23 MS. CONRAD: Now, you said something about having
24 children changing your view. Can you talk a little bit more
25 about that?

1 THE JUROR: Well, I just think that as far as probably
2 not being as naive and just thinking that -- you know, that
3 sometimes bad things happen out there and there needs to be
4 more consequence, whereas when I was younger and it was just
5 myself, I probably didn't have that point of view.

6 MS. CONRAD: Would a case that involved the death of a
7 child make it more difficult for you --

8 MR. MELLIN: Objection.

9 THE COURT: Sustained.

05:18 10 MS. CONRAD: You told us that -- well, you said on
11 your form that you were unsure whether you'd formed -- the way
12 the question is framed is a little bit difficult. If you'd
13 look at page 20, Question 77. So it's a little confusing, but
14 the way the question is actually written is it asks whether
15 you'd formed an opinion about whether Mr. Tsarnaev is guilty,
16 and your answer to that is "unsure."

17 THE JUROR: Uh-huh.

18 MS. CONRAD: So are you saying there that you're
19 unsure whether he's guilty or you're unsure whether you formed
05:19 20 an opinion?

21 THE JUROR: Well, I think they're one and the same
22 because I don't have that information, you know, as far as if I
23 just watched the television that day, then, you know, that
24 wouldn't be -- I don't know. That's just not where I would
25 come from, you know? I just don't feel like -- I am unsure as

1 far as, like, what you're asking. Like I'm not someone who's
2 going to say "guilty" or not "guilty."

3 MS. CONRAD: Sure. And I appreciate that and I really
4 appreciate -- first of all, I want you to understand that we're
5 really trying to find out how you feel. There are no right or
6 wrong answers here, which is really the most important thing,
7 is that you tell us as honestly as you can. And sometimes it's
8 hard to know yourself how you feel about something.

9 And of course, we appreciate that you understand the
05:20 10 legal concepts, but before you ever got your jury summons, did
11 you have an opinion about whether Mr. Tsarnaev was guilty?

12 THE JUROR: From what I saw on TV?

13 MS. CONRAD: Yes.

14 THE JUROR: I guess, yes, I suppose that we knew that
15 he was involved.

16 MS. CONRAD: And what was that based on?

17 THE JUROR: From the media. And like I started off,
18 it's just -- you know, I don't always believe everything that
19 I, you know, hear or see from the media, but it was from what
05:20 20 the media coverage was telling us.

21 MS. CONRAD: And is there anything about that media
22 coverage that stands out in your mind?

23 MR. WEINREB: Objection.

24 THE COURT: Yeah, I think so.

25 MS. CONRAD: Again, focusing on your state of mind, if

1 you will, before you got your jury summons did you have an
2 opinion about whether or not Mr. Tsarnaev should receive the
3 death penalty?

4 MR. WEINREB: That was just asked and answered.

5 MS. CONRAD: No, I asked about guilt; now I'm asking
6 about the penalty.

7 THE COURT: This is about the death penalty.

8 MR. WEINREB: I withdraw that.

9 THE COURT: The C and D part is the question.

05:21 10 THE JUROR: I'm sorry. So what was your question?

11 MS. CONRAD: So my question is just before you got the
12 jury summons did you have an opinion one way or the other about
13 whether Mr. Tsarnaev should receive the death penalty?

14 THE JUROR: Honestly, I don't think I thought about
15 it.

16 MS. CONRAD: And did you think about it after you
17 received the summons?

18 THE JUROR: Yeah, I think so. I think that's because
19 it was out there for -- you know, everybody obviously knew what
05:21 20 this trial was going to be about.

21 MS. CONRAD: And when you thought about it at that
22 point, did you form an opinion or did you have an opinion? And
23 I'm not, again, asking whether you could put that opinion
24 aside; I'm just asking whether you had an opinion.

25 THE JUROR: An opinion of?

1 MS. CONRAD: Whether he should receive the death
2 penalty.

3 THE JUROR: No, I did not.

4 MS. CONRAD: You said in answer to Question 76, which
5 is also on page 20, that you read news articles regarding the
6 venue appeal?

7 THE JUROR: Uh-huh.

8 MS. CONRAD: And can you tell us a little bit about
9 what you read?

05:22 10 MR. MELLIN: Objection.

11 THE COURT: No, go ahead. You can answer that.

12 THE JUROR: So I'm sorry. I don't have my glasses.
13 So the question is?

14 MS. CONRAD: Do you want to borrow mine?

15 THE JUROR: They made me leave me stuff outside.

16 So you want to know what I read specifically?

17 MS. CONRAD: Yes.

18 THE JUROR: Just that his lawyers were trying to
19 change the venue because, obviously, you know, you were
05:22 20 concerned about people on the North Shore and, you know, just
21 us being probably more prejudice to the situation.

22 MS. CONRAD: Why do you mention the North Shore in
23 particular?

24 THE JUROR: That's where I live. It wasn't in the
25 article.

1 MS. CONRAD: And you read this after you got the
2 summons?

3 THE JUROR: Oh, gee. I don't -- after I got the
4 summons? Honestly, I probably wasn't conscious of the fact
5 that that was even about this. I think as of January 5th I
6 didn't even put two and two together, so I think I did. I
7 think when I would just open, you know, my computer, it was
8 there.

9 MS. CONRAD: Sure.

05:23 10 THE JUROR: To be honest, did I read the whole
11 article? No.

12 MS. CONRAD: So you didn't realize -- am I
13 understanding you correctly that you didn't realize that your
14 jury summons was for this case until you came in on January
15 5th?

16 THE JUROR: Absolutely. Right.

17 MS. CONRAD: And so how did you feel about that?

18 MR. MELLIN: Objection.

19 THE COURT: Sustained. We asked it in the
05:23 20 questionnaire.

21 MS. CONRAD: Yes. But your -- let me go back, then,
22 your Honor.

23 So your answer to Question 74 was not your reaction to
24 being a juror in this case but just getting a jury summons in
25 general.

1 THE JUROR: 74? "What did you think of..." Yeah.

2 That's....

3 MS. CONRAD: So my question is: When you realized it
4 was for this case, how did you feel?

5 THE JUROR: On January 5th?

6 MS. CONRAD: Yes.

7 THE JUROR: Probably a little stupid that I didn't
8 realize it was that case because I think everybody else did.

9 MS. CONRAD: Not necessarily.

05:24 10 THE JUROR: Okay.

11 MS. CONRAD: But how did you feel about the
12 possibility of being a juror in this case? I guess is what I'm
13 asking.

14 THE JUROR: It probably gave me pause. I mean, I
15 don't know if it -- you know, what the emotions that I had. I
16 was just like, wow.

17 MS. CONRAD: And since then have you given that more
18 thought?

19 THE JUROR: Honestly? Yeah. I'm supposed to go to
05:24 20 Aruba in a couple of months. I was thinking, wow, you know,
21 this is going to be a long -- the judge said that you could be
22 here for a long time, so I thought, wow, it's a big commitment.

23 MS. CONRAD: Do you already have tickets for that?

24 THE JUROR: I do.

25 MS. CONRAD: You do?

1 THE JUROR: Yeah.

2 MS. CONRAD: And they're already paid for?

3 THE JUROR: No, it's a company -- for my husband,
4 so...

5 But that's probably the most thought I gave it.

6 MS. CONRAD: Your answer to Question 74, "Grateful to
7 have a legal system in place"?

8 THE JUROR: Yes.

9 MS. CONRAD: Can you tell me a little bit more about?

05:25 10 MR. MELLIN: Your Honor, objection. We've already
11 gone over this.

12 THE COURT: Yes, I think that's plain enough,
13 actually.

14 MS. CONRAD: May I just have a moment, your Honor?

15 (Pause.)

16 MS. CONRAD: On Question 89 -- and I'm sorry if you
17 already answered this, I had a little trouble hearing -- but it
18 looks like you crossed out 6 and changed it to 5?

19 THE JUROR: Okay. I'm sorry.

05:25 20 MS. CONRAD: It's on page 23. I'm sorry.

21 THE JUROR: Page 23? Page 23?

22 MS. CONRAD: Yes.

23 THE JUROR: Okay.

24 MR. WEINREB: Your Honor, if that's a question, I
25 object. That was asked and answered at length.

1 MS. CONRAD: I'm sorry. I just didn't hear the answer
2 if it was.

3 MR. WEINREB: Well, it will be in the transcript.

4 THE COURT: I think it shows that there was a -- the
5 juror originally put 6 and changed it to 5. I'm not sure how
6 much of a gradient change that is. They're both right in the
7 middle.

8 MS. CONRAD: Well, one's -- they're two different
9 answers.

05:26 10 THE COURT: Anyway, I think we can leave it as-is at
11 this particular point.

12 MS. CONRAD: When you read about the venue, did you
13 have any opinion about it?

14 MR. MELLIN: Objection.

15 THE COURT: Sustained.

16 MS. CONRAD: In working with law enforcement and your
17 experience with law enforcement, would anything about that
18 experience affect how you would view testimony by a law
19 enforcement officer?

05:26 20 THE JUROR: No.

21 MS. CONRAD: Would you tend to give more -- more
22 readily believe a law enforcement witness than a non-law
23 enforcement witness?

24 MR. MELLIN: Objection. Asked and answered.

25 THE COURT: Yeah. You know, I don't think we have to

1 follow up on questions that were unambiguously answered in the
2 questionnaire.

3 MS. CONRAD: Well, your Honor, respectfully,
4 Mr. Mellin asked a number questions about work with law
5 enforcement. I'm following up on those.

6 THE COURT: Well, that was about experience. But the
7 question about crediting or discrediting law enforcement
8 testimony because of its source was plainly in the
9 questionnaire. We have an answer to that.

05:27 10 MS. CONRAD: Thank you very much.

11 THE JUROR: Okay.

12 THE COURT: Okay. Thank you.

13 THE JUROR: Thank you.

14 (The juror is excused.)

15 MS. CONRAD: Your Honor, may I just raise one issue on
16 that last point? I feel like I've read this questionnaire
17 pretty thoroughly, and the way the question is framed is,
18 Question 36, is "Do you have any concerns about your ability to
19 follow that instruction," which is not quite the same thing.
05:27 20 And if Mr. Mellin is allowed to ask questions about details
21 about interactions with law enforcement, it seems to me it's
22 fair follow-up to ask how that would affect your view of a
23 witness.

24 THE COURT: You were just asking the same question.

25 MS. CONRAD: No, I'm not asking "Do you have any

1 concerns"; I'm asking whether it would cause her to view it
2 differently. It's not whether she has concerns.

3 THE COURT: I think it's substantially the same
4 question.

5 Anyway, let me just point out on the ambiguity -- by
6 the way, I think most of these questions were as a result of a
7 shared proposal.

8 MS. CONRAD: Well, excuse me, your Honor. That's not
9 quite true.

05:28 10 THE COURT: Well, I don't know all the history. I
11 know that I didn't write it, so I know -- let me go to another
12 potentially ambiguous -- I don't think 77 is as ambiguous as
13 has been suggested. The question is: "Have you formed an
14 opinion," and then if you continue on, "that the defendant is
15 guilty?" It's not whether the defendant is guilty, which would
16 be a question about the existence of an opinion. This presents
17 the opinion and says, "Have you formed this opinion?"

18 MS. CONRAD: But then what is --

19 THE COURT: So I'm not sure the ambiguity is as.

05:28 20 MS. CONRAD: But then what does "unsure" mean in that
21 context?

22 THE COURT: I don't know. That's a fair question.

23 MS. CONRAD: That was my question.

24 THE COURT: But -- no. The suggestion was, and I
25 think it happened the other day too, and I hadn't focused on it

1 myself until that time, that if the question was "Have you
2 formed an opinion whether he's guilty or not," then you could
3 arguably be asking whether the mental event had occurred and
4 that there was an opinion rather than asking for what the
5 opinion was.

6 This posits the opinion in each of the subsections and
7 says, "Have you formed an opinion that he is guilty? Yes, no
8 or unsure?" "Have you formed an opinion that he's not guilty?
9 Yes, no or unsure." So it's not whether you have an opinion;
05:29 10 it's about whether you have the specific opinion.

11 MS. CONRAD: But I think the problem is that for
12 people who answer "unsure," it is more plausible -- or
13 certainly is plausible that they are unsure whether he's guilty
14 or not as opposed to they're unsure whether they have an
15 opinion, which frankly doesn't make any sense.

16 THE COURT: Well, okay. I think I made my point. I
17 think we could move on.

18 MR. WEINREB: Your Honor, could we go to sidebar mode
19 for a minute?

05:29 20 THE COURT: All right.

21 THE CLERK: Cut it.

22 MR. DOREAU: Audio and video off.

23 (Discussion at sidebar and out of the hearing of the
24 public:)

25 MR. WEINREB: So over the break the parties took

1 another look at 238, and I think we've reached an agreement.

2 MS. CONRAD: I'm sorry. I can't hear a word
3 Mr. Weinreb is saying.

4 THE COURT: That's the next one?

5 MR. WEINREB: Yeah. A combination of hardship -- it's
6 apparently a single mother of a middle-school child who she
7 says has depression -- and then there are other factors.

8 THE COURT: Okay. I think I had the hardship issue in
9 my mind when I reviewed this.

05:30 10 MS. CLARKE: There are also substantial connections.

11 MR. BRUCK: That was the basis on which we agreed.

12 THE COURT: Where is that?

13 MR. MELLIN: 80 through 82, your Honor.

14 MR. BRUCK: Connections to the event.

15 THE COURT: I don't know if they are but...

16 MR. WEINREB: That's not the basis on which we agreed,
17 but I understand that's a concern of the defense.

18 THE COURT: It does seem to be a concern. We might
19 have to explore that to find out -- although I think 80 is
05:31 20 concerning, I'm not sure 81 and 82 is so concerning. But 80.
21 I think my reaction when I read the circumstances of the
22 hardship, that that was likely to be recognized.

23 So I guess we can just skip that.

24 Okay. So we'll take a break. And I have another
25 matter that I have to deal with. It shouldn't take too long.

1 It's a conference in another criminal case. I think we're
2 going to do a telephone conference at about 2:30. So three
3 o'clock okay for everybody --

4 COUNSEL IN UNISON: Sure.

5 THE COURT: -- just to have a round number?

6 MS. CLARKE: We think the Court should be able to
7 reassign its other cases.

8 (Laughter.)

9 THE COURT: Night court.

05:32 10 (Laughter.)

11 THE COURT: Before everybody wanders, we have a
12 list -- this should be on the record but it's in sidebar mode.
13 So stay cut.

14 MR. DOREAU: We're still off.

15 THE COURT: We're still off.

16 So we prepared a list of my suggested excusals for
17 tomorrow, and if you're agreeable to those and if you have any
18 others that you want to propose, we can deal with them and then
19 we'll backfill. We have, then, a much more extensive list for
05:33 20 what is basically the rest of Panel B that I would like to have
21 resolved by Friday afternoon, if we could, so that we could
22 prepare all of next week without these people. I think we're
23 about to get to the point where we'll stop dragging in people
24 that we immediately send home, which is troubling, frankly,
25 but...

1 So if you'd each --

2 MS. CLARKE: So, Judge, this long list is --

3 THE COURT: Is for next week.

4 MS. CLARKE: -- out of the rest of B?

5 THE COURT: Yes. It covers a couple hundred people, I
6 think. And let me just tell you, my criterion is that it's
7 virtually certain by the -- what we've already been doing in
8 two areas in particular -- well, I guess principally hardship
9 is what it is. Principally hardship. And there are different
05:33 10 kinds of hardship: There's, perhaps, family matters; there's,
11 perhaps, trips that are planned; there's, perhaps, student
12 status and something.

13 But I have not tried to cut it finely, so that if
14 somebody looks like they're an hourly worker but they have
15 answered Question 10 "no," I haven't proposed them to be
16 excused. I haven't made the judgment that they can't handle it
17 even though I suspect that might be the case.

18 So these are intended to be pretty clear people. And
19 so there will still be some people that will have hardships
05:34 20 that we'll recognize, but these are ones that are palpable on
21 the face of it.

22 MS. CLARKE: Judge, what does this list go through
23 tomorrow, 279?

24 THE COURT: We had the number.

25 LAW CLERK: It's at the bottom.

1 THE COURT: Oh, yeah, it's at the bottom. Whatever it
2 says in the footnote.

3 MS. CLARKE: Through 276. We've already agreed on
4 242, I think.

5 THE COURT: Well, anyway, take a look at this, and
6 this afternoon let us know about tomorrow's, and then by, you
7 know, early afternoon tomorrow, so Jim can work on it for next
8 week, if you could let us know about the rest of the list.
9 There's about 30 or so of them, I think.

05:35 10 MR. MELLIN: Your Honor, if we -- if the parties have
11 a perhaps slightly more liberal criteria of hardship and we can
12 come to agreements that exceed what your Honor has suggested,
13 should we propose those or not?

14 THE COURT: Yeah, you can propose them. I would want
15 to look at them. So okay. Thanks. We'll see you about three.

16 (The Court exits the courtrooms and there is a recess
17 in the proceedings at 2:28 p.m.)

18 (The Court enters the courtroom at 3:08 p.m.)

19 THE COURT: Okay. No broadcasting, right?

06:15 20 So we'll consider the jurors who we interviewed today
21 starting with Number 204.

22 MR. CHAKRAVARTY: Your Honor, the government has a
23 motion. This was -- I think maybe a first amongst the
24 jurors -- the prospective jurors that we've seen in that it was
25 not a particular response to any of the material questions in

1 the questionnaire that gives pause to the government, but it's
2 how she responded. She clearly had some anxiety. She was open
3 and candid about that in the paper. When she sat down she was
4 visibly extremely anxious. I think even the Court reminded
5 her -- caused her to relax a little bit. But then as the
6 questioning went on, time and time again she manifested both by
7 delays and pauses in how she answered some of the questions,
8 the anxiety that she was open with us that she had.

9
06:16 10 In this case where a lot of the evidence is going to
11 be very disturbing and for a person who, you know, in her
12 words, she doesn't like to think about those things -- another
13 thing she said was it makes her nervous to even think about the
14 things that happened to her brother in the context of -- it's
15 somebody who's avoided that kind of assessment of some of the
16 hideous issues that anybody will ever have to do strikes me
17 that this is not the case that we should have this young woman,
18 who might grow to have the confidence to be able to deliberate
19 with a jury with at least 12 people in another case maybe down
the line.

06:17 20 At this stage in her life the government doesn't feel
21 confident that she would be able to do so in a constructive way
22 that regardless of how she comes out and regardless of her
23 feelings on the death penalty or guilt or innocence, it's just
24 not constructive to the process that we're here for. So that's
25 the reason for the cause.

1 MR. BRUCK: We disagree. Do you need to hear argument
2 from us?

3 THE COURT: Sure.

4 MR. BRUCK: Well, I mean, people come in all, you
5 know, different types. And she described her anxiety as
6 something that tends to dispel when she gets used to the
7 situation, which she did visibly. She's a young person who
8 took very seriously some of the questions about the death
9 penalty. She does -- I don't think it's disqualifying that
06:17 10 somebody doesn't listen to the news. In this case it's a
11 little bit of a relief, assuming that it's true, and I think it
12 did seem to be true for her.

13 There's just -- I mean, she's a somewhat shy person,
14 but I think the government's real objection was that she became
15 very solemn when asked about the death penalty and expressed an
16 appropriate degree of seriousness about -- that that would be a
17 hard decision. And I think the government feels like, well,
18 she's not a good juror for them so we'll move to disqualify her
19 on the grounds that she's anxious.

06:18 20 But I just don't think that's warranted, and I think
21 it's somewhat clear what the government really doesn't like
22 about her, is that she's not a strong death penalty juror.

23 MS. CONRAD: May I just add one thing to that? What
24 she said she was anxious about was speaking in front of other
25 people like this.

1 THE COURT: I won't strike her for cause. I actually
2 thought she did pretty well. Given her self-report about
3 anxiety, I thought she did pretty well. I think some of our
4 more sophisticated jurors today displayed nervousness as well.
5 I mean, this is an unusual thing for people to be confronted
6 with and in a forum they're not accustomed to. And it's kind
7 of intimidating with all you people staring at them. I
8 actually thought she did pretty well.

9 So I don't see her anxiety or her deportment here as a
06:19 10 cause for excuse for cause. So we'll leave her in.

11 205?

12 MR. WEINREB: No motion.

13 MR. BRUCK: No motion except in the -- as against the
14 background of our venue motion, our position of implied
15 prejudice applies to -- you know, when we say we have no motion
16 with respect to a juror, that obviously doesn't negate the fact
17 that we think there is implied prejudice as to all jurors in
18 this venue, so...

19 And I think this is a juror to which that would
06:19 20 apply --

21 THE COURT: Okay.

22 MR. BRUCK: -- in particular. We don't think there's
23 anything particular about him that is -- allows us to make a
24 particularized motion.

25 THE COURT: I guess I'm not following this. You

1 object to everybody.

2 MR. BRUCK: We do.

3 THE COURT: Okay. I understand that part. That's all
4 you're reserving?

5 MR. BRUCK: Thank you.

6 THE COURT: Okay. All right. He's in.

7 I think Number 208 we've already assessed, as 211.

8 That brings us to 215.

9 MR. WEINREB: So, your Honor, the government moves to
06:20 10 strike 215 as being prevented or substantially impaired from
11 imposing a death sentence. The government's entitled to jurors
12 who can, in fact, impose a sentence of death if the juror
13 determines that it's the appropriate sentence, and there are
14 numerous cases which hold that a -- if a juror is unable to
15 unequivocally state that he or she can do so, that it is
16 appropriate to strike them for cause.

17 This juror could not even once unequivocally state
18 that she could do so. And, in fact, even in situations where a
19 juror states unequivocally that he or she can do so but then
06:21 20 seems to back away from that or contradict it, even that, the
21 cases have held, is sufficient grounds for excluding them.
22 *Uttecht* and many other cases from the courts of appeals from
23 all of the circuits have held that.

24 So this juror under the, you know, well-settled
25 prevailing standard is substantially impaired in her ability to

1 impose the death penalty. When asked if she could actually do
2 it having concluded that it was the appropriate sentence, the
3 most she could ever muster is, "I'm not sure. I don't know. I
4 want to say yes," but she could never actually say yes.

5 And, in fact, the very last time she was asked the
6 question, which was by Mr. Bruck, I'm sure the Court recalls
7 she hesitated for a very long time and really seemed to be
8 searching her soul as to whether she could do it. And at the
9 end she said, "I want to say yes but I don't know" or "I'm not
06:22 10 sure."

11 And that's not a fair juror for the government.
12 That's not a juror who can necessarily follow the law which is
13 that she would be able to actually impose the death sentence.
14 And although I understand, as the Court said earlier, that it
15 puts jurors in a difficult spot to be asked to predict what
16 they could or could not do in an unfamiliar situation, that's
17 the whole nature of this process. Being on a jury where you
18 have to impose a sentence of death on somebody is a possibility
19 that is going to be unfamiliar to every juror. And so we have
06:22 20 to be able to rely on their prediction of their own ability to
21 do so or not. And this juror simply was not sure; she could
22 not say yes.

23 THE COURT: The cases you refer to -- I'm guessing, I
24 guess -- say it was not error to have excused a juror under
25 those circumstances rather than saying a juror who answers

1 thusly must be excused.

2 MR. WEINREB: Well, yes. But I would add the caveat
3 that since the government can't appeal under those
4 circumstances, it's logical that you are never going to see a
5 circumstance saying that the Court erred by failing to grant a
6 government's strike. But I do think that the -- although the
7 Court is absolutely correct about that, that the cases -- if
8 you -- the cases from *Witherspoon* and *Witt* on make it clear
9 that the government is entitled -- and that's the word that the
06:23 10 courts use, including the Supreme Court -- entitled to jurors
11 who are not prevented or substantially impaired from imposing
12 the death penalty.

13 So although a court will never be found to have erred
14 by granting a defense strike, because it's impossible for the
15 government to appeal that, I think that it is clear that it is
16 not -- it is contrary to the law to seat a juror who is, in
17 fact, unable to state equivocally that they can give
18 consideration to it. Not actually do it in this particular
19 case, but that if they determine that it was the appropriate
06:24 20 sentence, actually impose a death sentence.

21 MR. BRUCK: Your Honor, when you were entertaining
22 Mr. Weinreb's objection to one of my questions, you described
23 the difficulty of a juror projecting into the future what he or
24 she may or may not do in response to various eventualities, and
25 I really thought you were talking about this juror, because

1 this is exactly what happened. This juror was being more
2 thoughtful, perhaps, than many others about the awesome nature
3 of this decision and one about which she had never thought
4 before. And she said many times over that she could make the
5 decision that the death penalty was appropriate, but then the
6 best that she or indeed anybody who's really being honest can
7 say about, "Well, can you actually do it?" is, "Well, I don't
8 know."

9 But she felt like she could, that she should. She
06:25 10 went as far as she possibly could. And it just didn't seem at
11 the time that we were -- we had an impaired juror; it seemed
12 like this was a juror who was simply struggling with a
13 hypothetical situation that she had never encountered before.

14 The test shouldn't be jurors who take this question
15 seriously and struggle with it are ineligible to serve, and
16 only the jurors who say, "Yeah, sure. No problem. I would do
17 that," are the ones who exclusively sit on juries. That
18 would -- is the sort of jury that *Witherspoon* forbids.

19 If this juror did not strike your Honor as
06:25 20 substantially impaired, that ends the issue. The cases that
21 Mr. Weinreb is referring to are the ones where the court is
22 convinced that a juror is impaired, and then the question
23 becomes does the record support the exercise of discretion?
24 But if she did not strike you as an impaired juror, then
25 there's nothing -- there's nothing really further to be

1 concerned about. And I don't think she should have.

2 We had a Juror No. 60, we revisited her
3 disqualification. The best she could say about whether she
4 would put aside her opinion of guilt was that she thought so,
5 and that was ruled to be sufficient. And this is similar.
6 This is a juror who simply takes the decision very seriously.
7 It's a new issue. She was struggling in front of our eyes to
8 imagine herself sentencing somebody to death. It's the kind of
9 juror that we ought to have in a capital case. And we don't
06:26 10 think there's any basis for finding her substantially impaired.
11 There is certainly no basis for requiring her disqualification.

12 THE COURT: Yeah, I'm going to deny the strike on this
13 as well. I think that she was a very thoughtful juror. One of
14 the issues, I probably said this already, is some jurors are so
15 scrupulous about their answers that they over-doubt their own
16 ability. I mean, I've found that as long as I've been trying
17 cases. And I think this is a juror in that category. I think
18 there's a difference between intellectually being unable to
19 vote for the death penalty and not being sure here that at some
06:27 20 future occasion on some body of evidence emotionally she will
21 be able or unable to do it. I just think that's a very
22 difficult question to assess.

23 And so I looked at other criteria or indicators, and I
24 think her general intelligence, apparent intelligence and
25 thoughtfulness, are the marks of a good juror. And the

1 substantive answers she gave as well. I mean, her position was
2 essentially, "I've got to hear everything before I tell you
3 what I think." So I think she would be a good juror.

4 Number 223 we talked about.

5 That brings us to 229.

6 MR. MELLIN: No motion.

7 THE COURT: And we talked about 238.

8 So passed on to the next level would be 204, 205, 215,
9 229. Let me sum up -- this may already be in the record --
06:28 10 people who we may have either passed on beyond because -- I
11 guess these are all people we haven't seen, is that right -- on
12 the papers and determined no further voir dire was necessary.
13 Let me just read the list so it's in the record in case it's
14 otherwise ambiguous. That's for this -- I guess for --

15 MS. CLARKE: Where are you starting?

16 THE COURT: 201. I don't remember. Was that today or
17 yesterday?

18 LAW CLERK: This is all today.

19 THE COURT: This is all today. So 201, 202, 203, 206,
06:29 20 207, 209, 210, 212, 213, 214, 217, 218, 220, 221, 222, 224,
21 225, 226, 227, 231, 232, 233, 235 -- and with respect to 235, I
22 add that we also have a doctor's letter with respect to that
23 particular juror -- 236 and 242.

24 MS. CLARKE: And I'm not sure what it was the Court
25 was reading off because there were others that were excused

1 that --

2 THE COURT: These are the ones that we didn't
3 interview, I believe, that we were removed from the interview
4 process. There are others in -- yes, there are others that we
5 have seen that we've dealt with. I just wanted to record those
6 people we did not actually interrogate.

7 Okay. So we look -- yeah. Did you have something?

8 MR. WEINREB: I was just wondering if we're going to
9 move on now to the proposed agreed strikes.

06:30 10 THE COURT: If you're ready to do that, yeah.

11 MR. WEINREB: We're ready.

12 THE COURT: Okay. So where's my list? I don't know
13 if I brought it in. I may have left it in the other room. I
14 think I maybe did.

15 Did you add any?

16 MS. CLARKE: Yes. 188, your Honor, was a carryover.

17 THE COURT: What's the -- can you just highlight
18 the --

19 MS. CLARKE: He's -- I think it was hardship that we
06:31 20 agreed on. I don't have the thing in front of me. I just keep
21 carrying that number forward until he's coming back.

22 Do you have it?

23 THE COURT: Yeah, well, I see his Question 10 was his
24 concern about discontinuation of health insurance.

25 MS. CLARKE: Yes.

1 THE COURT: Yeah. No, I don't have any issue with
2 that.

3 MS. CLARKE: And of the list that the Court provided,
4 I think we're all in agreement except for 244.

5 THE COURT: All right. I don't think I have it here.
6 I'll look at it.

7 Who thinks it should be and who thinks it shouldn't
8 be?

9 MR. WEINREB: We would agree to strike 244.

06:32 10 MS. CLARKE: We thought we should ask a little more
11 about the hardship.

12 MR. BRUCK: This is the homesteader with chickens.

13 THE COURT: Well, if I recall, she said she had to
14 feed the chickens three times a day.

15 MR. WEINREB: Yes.

16 THE COURT: That's what caught my eye.

17 MR. BRUCK: Having raised chickens, I can tell you
18 they don't need that level of attention.

19 THE COURT: You had neglected chickens, I guess.

06:33 20 (Laughter.)

21 MR. WEINREB: I was looking to a very entertaining
22 voir dire.

23 MR. BRUCK: If you can keep it under 20 minutes of
24 back-and-forth questions about chickens --

25 MS. CLARKE: Your Honor, her husband is a senior

1 marketing executive, and we just thought it would be worth
2 inquiring.

3 THE COURT: I'll look at it.

4 MR. WEINREB: We would also add 219 as a proposed
5 strike for tomorrow on the grounds of hardship.

6 MS. CLARKE: 219's gone.

7 THE COURT: We passed 219.

8 Oh, I remember her. Yeah, she was supposed to be here
9 today and didn't, and she has --

06:33 10 MS. CLARKE: Is she the carryover?

11 MR. WEINREB: She's the single mother with three kids.

12 THE COURT: No, there was something else that I saw
13 about her.

14 MS. CLARKE: Oh, do you know what?

15 MR. WEINREB: She said she was unable to set aside her
16 opinions about the defendant's guilt.

17 MS. CLARKE: Yeah, I thought 219 was gone but...

18 MR. WEINREB: She's possibly unemployed at this point.

19 MS. CLARKE: We don't see a hardship. There was a
06:34 20 hearing loss on the right side.

21 THE COURT: I know I had her. I think I left it in my
22 office because I was expecting her tomorrow. I think I put it
23 up there. So where are we? There's not an agreement on her?

24 MS. CLARKE: Right.

25 MR. WEINREB: Right.

1 THE COURT: Then we'll bring her in.

2 Okay. So in addition to --

3 MR. WEINREB: I'm sorry, your Honor. We propose one
4 other, which is 249.

5 THE COURT: Okay.

6 MS. CLARKE: 249 is gone.

7 MR. McALEAR: She has been excused.

8 MR. WEINREB: 249 has been excused? Okay. Okay. So
9 we're prepared to move ahead and consider who -- the proposed
06:35 10 agreed strikes to the backfilled jurors as well, if the defense
11 is ready and the Court is ready. If you want to wait until
12 Friday afternoon.

13 THE COURT: Let me get tomorrow first.

14 MR. WEINREB: Okay.

15 THE COURT: So we have the numbers, then, on the sheet
16 that we prepared, which are two, four, seven, and then there's
17 a question about one of them, 244, which I will look at.

18 MS. CLARKE: Okay.

19 THE COURT: So in addition to those seven --

06:36 20 MR. WEINREB: Perhaps Mr. McAlear can tell us how many
21 are left at this point.

22 THE COURT: Yeah, okay.

23 Well, did you have somebody in addition to the ones I
24 suggested? I know you wanted one out, which is 244, but did
25 you have any additional?

1 MS. CLARKE: One in.

2 MR. BRUCK: One off the list.

3 THE COURT: Yeah, I'm sorry. It's a two-way street
4 and we're going in opposite directions.

5 MS. CLARKE: I feel it.

6 (Laughter.)

7 THE COURT: Are there additional proposed excuses from
8 tomorrow's group?

9 MS. CLARKE: Not that we had a chance to --

06:36 10 THE COURT: All right. So the range of decision for
11 this is these seven or six of these seven. Is that right?
12 Excluding 244?

13 MS. CLARKE: Right.

14 MR. WEINREB: That's right.

15 THE COURT: All right. So we'll resolve that.

16 MS. CLARKE: We reserve the right, of course, to
17 change our minds -- no, only kidding.

18 THE COURT: It's a judicial privilege.

19 (Laughter.)

06:36 20 THE COURT: So then -- this basically, the long list
21 that you see here, basically exhausts Panel B; that is, we've
22 gone through to the end of Panel B for these people and propose
23 these. So if you have a response now, that would be great. I
24 mean, we could start assembling next week because it would help
25 us to the extent we have to backfill for Monday, we could begin

1 do that.

2 MS. CLARKE: We've only had a chance, really, to look
3 through 387, but we can tell you on those. And we can do the
4 others, you know --

5 THE COURT: Okay. So that will give us a start
6 anyway. So through 387.

7 MS. CLARKE: Right. We thought that the Court should
8 still look at 311 and 358 -- or bring them in, 311 and 358.
9 The others we were in agreement through 387.

06:37 10 THE COURT: 311, 358?

11 MS. CLARKE: Right. And we just haven't looked at the
12 remainder, Judge.

13 MR. WEINREB: We agree with all of them.

14 THE COURT: All right. I'll look at 311 and 358.

15 MR. WEINREB: I'm sorry. Except for 414.

16 THE COURT: We weren't going beyond 387 for that one,
17 but I could get the government's answer if you've done them all
18 the way down to the bottom.

19 MR. WEINREB: We have. And we would agree with all of
06:38 20 them except for 414, I believe just said with respect to
21 hardship, children and financial issues.

22 THE COURT: 414?

23 MR. WEINREB: Yeah. So it was a little unclear what
24 that meant.

25 THE COURT: All right. So you can tell us either late

1 today or tomorrow morning about the rest.

2 So the --

3 MR. WEINREB: I'm sorry, Judge. Before we move on,
4 would you like our proposals for additional strikes within the
5 range that the Court's considering, 280 to 387, because we
6 identified two others that seem to fit the Court's criteria for
7 hardship strikes.

8 THE COURT: Oh, okay. Yes. Okay.

9 MR. WEINREB: So we believe 283 is a full-time
06:39 10 student, wasn't on the Court's list.

11 THE COURT: Is that the one we had a question about?
12 I don't know.

13 LAW CLERK: I'm not sure.

14 THE COURT: Do you know -- there was one, it was
15 ambiguous. He didn't tell us he was a student in Question 26;
16 he said it in Question 27. I don't know if that's the one
17 you're talking about. Anyway, I'll just take the numbers.

18 MR. WEINREB: He identified himself as a computer
19 science grad student at MIT.

06:39 20 THE COURT: Okay. All right.

21 MR. WEINREB: And then the other one was 290 who said
22 that -- the juror said had ride problems.

23 THE COURT: Is that the cook from the Cape?

24 MR. WEINREB: Yes, the cook from the Cape.

25 MS. CLARKE: Good, I'll remember.

1 MR. WEINREB: I think for a three- or four-month trial
2 having to come up from the Cape is different from a one-week
3 trial.

4 THE COURT: I'm not going to agree to that general
5 proposition but --

6 MR. WEINREB: Okay.

7 THE COURT: -- I'll look at it.

8 I think I toyed with taking him out. I thought we
9 should talk to him. I think that was my reaction. That's why
06:40 10 I know who you're talking about. So I may be inclined to leave
11 him in.

12 MR. BRUCK: Is that 283 or 290?

13 THE COURT: That was 290.

14 MR. WEINREB: 290.

15 THE COURT: So does the defense have any -- we talked
16 about some of mine that you thought should not be excused. Do
17 you have additional ones --

18 MS. CLARKE: We haven't looked at it for that.

19 THE COURT: Okay. But they would -- those would only
06:40 20 be joint ones anyway.

21 MS. CLARKE: Right.

22 THE COURT: Right. So I'm not interested in those at
23 this point. Okay.

24 MS. CLARKE: So who would we have tomorrow?

25 MR. WEINREB: Only Jim can tell us that.

1 THE COURT: What was our last number today?

2 MS. CLARKE: We struck 242.

3 THE COURT: The next number after 242, whatever it is,
4 that hasn't been excused. I don't know. And it would go --

5 MR. McALEAR: Yeah.

6 THE COURT: -- I don't know that we have the last --
7 do you have the last number?

8 LAW CLERK: We start at 243.

9 MR. McALEAR: If we go to 276, it's more than 20. So
06:41 10 I just want to know how many you wanted me to bring in.

11 MS. CLARKE: Because we start with 219.

12 MR. McALEAR: 219 is number one; 242 would be number
13 two.

14 THE COURT: Why would you -- and you're assuming
15 these, excused?

16 MR. McALEAR: Yes. Yes.

17 THE COURT: Okay. And that would get -- 20 would
18 bring us to where?

19 MR. McALEAR: Twenty would get us to 274.

06:42 20 THE COURT: Okay. Let's do that. 274 of --

21 But we agreed on 188, who was going to come tomorrow,
22 he'll not come? Okay.

23 MR. McALEAR: That's right.

24 THE COURT: I don't know what the weather is going to
25 be tomorrow. There's talk about a storm.

1 MR. WEINREB: A few inches of snow, they said.

2 THE COURT: It comes in the morning when people will
3 be driving?

4 MR. WEINREB: Yes. It starts after midnight.

5 MS. CLARKE: Is the CDA going to vote to stay home?

6 MR. WEINREB: Boston is safe. What's a few inches of
7 snow?

8 MS. CLARKE: I know. Ms. Conrad said it's a dusting,
9 but I think she's learned --

06:43 10 MR. WEINREB: Unfortunately, there's another storm
11 brewing for Sunday night.

12 THE COURT: I guess I'm inclined to soldier on because
13 this is going to happen every week but -- we can't go by the
14 court's generic rule of the Boston Public Schools. It's too
15 imprecise for our purposes, I think. We have a manageable
16 number of jurors that can be contacted even individually, if
17 they had to be, to say don't come.

18 MS. CLARKE: Should we start later?

19 THE COURT: We probably will inevitably, but -- I
06:43 20 guess what it does raise is whether we should try to have as
21 many as 20. Maybe we should reduce it to 15 or so.

22 MS. CLARKE: Right.

23 MR. WEINREB: Well, it might make more sense to go the
24 other way, assume that some aren't going to make it, or some
25 aren't going to make it until the afternoon, and start in the

1 morning.

2 THE COURT: Do you have the towns that the people
3 would be coming from?

4 MR. McALEAR: I do.

5 THE COURT: You do?

6 MR. McALEAR: 219 is New Bedford. She had problems
7 coming in today. That does not include any snow on the ground,
8 as far as I know. 243, Stoughton; Pepperell; Lawrence;
9 Stoneham; Everett; Boston; Fairhaven.

06:44 10 THE COURT: Okay. I get the idea.

11 (Laughter.)

12 MS. CLARKE: Let's bring in ten and start at noon.

13 MR. WEINREB: What random distant towns.

14 THE COURT: I don't know. What are your views?

15 MR. BRUCK: Bring in ten and start at ten or
16 ten-thirty?

17 MR. McALEAR: Whatever you guys decide here, I'm still
18 telling the jurors eight o'clock. I'm down there; we're down
19 there. We have jurors who wander in at eight-thirty. You
06:45 20 know, what I experienced as far as traffic out front this
21 morning, jurors had a hard time coming in later; for example,
22 of the two jurors that we were waiting on, they got here 30
23 minutes before they actually walked through the door, but the
24 parking and the traffic change from what they were --
25 experienced on the 5th just -- they didn't know where to go.

1 THE COURT: Do you know from paying parking tickets --
2 do you pay their parking expenses on a daily basis for them?
3 How do they get reimbursed for parking?

4 MR. McALEAR: We reimburse them --

5 THE COURT: Here's what I'm getting at: Do you know
6 where they're parking?

7 MR. McALEAR: Yes.

8 THE COURT: Do you know where they're parking?

9 MR. McALEAR: Vertex, for the most part, jurors who
06:46 10 are coming in, this group, because there's only 20 of them, and
11 there's plenty of parking.

12 THE COURT: There's enough room there? Okay.

13 MR. McALEAR: The first three days they were all over
14 the place.

15 MR. WEINREB: I don't know if this would be a welcome
16 decision or not, but having driven in this morning and having
17 gone in the same traffic, the two lots that are on the street
18 when you get off the exit from the Pike for Seaport
19 Boulevard -- you pass two lots on your way to Northern Avenue.
06:46 20 That -- it was right there at that intersection that you have
21 to sit for 20 minutes before you could take that left turn.

22 If people park in those lots, they could shave 20
23 minutes off their commute because then they just walk to the
24 lot around the corner to the courthouse.

25 MR. McALEAR: Correct.

1 MR. WEINREB: I don't know if that's something that
2 makes sense to propose to the jurors. I was tempted to do it
3 and I have a spot in the Vertex lot.

4 MR. McALEAR: We've done it a couple of times and told
5 them to park down there, and what happens is we tell the wrong
6 person and then they get lost and -- a lot of these people
7 don't come in to Boston at all, so they follow the directions
8 that are on their thing to the law, and that takes them right
9 to the Vertex building and they're right next door, and most of
06:47 10 our jurors feel comfortable with that.

11 I understand your suggestion. The problem is it's not
12 the easiest walk from that parking lot if you don't know where
13 you're going because you have to cut in through the Gather
14 walkway, and if you don't know where that is, you're --

15 MR. WEINREB: Right. Would it make sense to summon in
16 all 20 and then whoever gets here by a certain amount of time
17 or -- swear them in and --

18 MS. CLARKE: That's unfair.

19 THE COURT: Yeah, I don't want to engineer absences.
06:48 20 That's my problem with that.

21 MR. WEINREB: I'm not saying exclude the next till the
22 next day, just till later in the day.

23 MS. CLARKE: Maybe we're just safe to go with ten and
24 see where we end up.

25 I mean, for those people way out, is this even cleared

1 up enough, what we've already got on the ground?

2 THE COURT: That's going to vary by locality, I think.

3 MR. WEINREB: Having driven the roads this morning, I
4 don't think that's the issue.

5 THE COURT: Certainly not the main roads. Being a
6 Bostonian, it's the side roads that are the real problem.

7 Why don't we do a dozen and just see what happens.

8 And they'll come in when they're -- you know, they'll be told
9 to come in at the usual time, and some will, some won't, and
06:49 10 we'll just get them here.

11 MR. McALEAR: Okay.

12 THE COURT: All right? Okay. Thanks.

13 MS. CLARKE: Thank you, Judge.

14 (The Court exits the courtroom and the proceedings
15 adjourned at 3:42 p.m.)

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1 C E R T I F I C A T E
23 We, Marcia G. Patrisso, RMR, CRR, and Cheryl
4 Dahlstrom, RMR, CRR, Official Reporters of the United States
5 District Court, do hereby certify that the foregoing transcript
6 constitutes, to the best of our skill and ability, a true and
7 accurate transcription of our stenotype notes taken in the
8 matter of Criminal Action No. 13-10200-GAO, United States of
9 America v. Dzhokhar A. Tsarnaev.10
11 /s/ Marcia G. Patrisso
12 MARCIA G. PATRISSO, RMR, CRR
Official Court Reporter13 /s/ Cheryl Dahlstrom
14 CHERYL DAHLSTROM, RMR, CRR

15 Date: 1/29/15

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